

PREPUBLICATION COPY NOTICE:

The EPA Administrator signed the following final rule on **July 15, 2011**.

This is a prepublication version of the final rule that EPA is submitting for publication in the *Federal Register*. While the Agency has taken steps to ensure the accuracy of this Internet version of the final rule, it is not the official version of the final rule for purposes of judicial review. Please refer to the official version of the final rule that will appear in a forthcoming *Federal Register* publication, which is currently expected to occur in the week of July 24, 2011.

Once the official version of the final rule publishes in the *Federal Register*, this advance publication version of the final rule will be replaced with a link to the final rule that appears in the *Federal Register* publication. At that time, you will also be able to access the on-line docket for this rulemaking at <http://www.regulations.gov>. You can then use EPA's electronic docket and comment system at www.regulations.gov, to access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. The docket number for this rulemaking is **EPA-HQ-OPPT-2005-0049**.

For additional information about lead and lead hazards, go to <http://www.epa.gov/lead/>. You can speak to an information specialist by contacting [The National Lead Information Center \(NLIC\)](http://www.epa.gov/lead/pubs/nlic.htm) at **1-800-424-LEAD (5323)** (see also <http://www.epa.gov/lead/pubs/nlic.htm>).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–8881–8]

RIN 2070–AJ57

Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As part of a settlement of litigation over certain post-renovation cleaning requirements of the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule, the EPA agreed to propose a number of revisions to the 2008 RRP rule that established accreditation, training, certification, and recordkeeping requirements as well as work practice standards for persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities and to subsequently take final action on the proposed rule by July 15, 2011. The proposed rule published on May 6, 2010. EPA has decided not to promulgate dust wipe testing and clearance requirements as proposed. However, EPA is promulgating several other revisions to the RRP rule, including a provision allowing a certified renovator to collect a paint chip sample and send it to a recognized laboratory for analysis in lieu of using a lead test kit, minor changes to the training program accreditation application process, standards for e-learning in accredited training programs, minimum enforcement provisions for authorized state and tribal renovation programs, and minor revisions to the training and certification requirements for renovators. EPA is also promulgating clarifications to the requirements for vertical containment on exterior renovation projects, the prohibited or restricted work practice provisions, and the

requirements for high-efficiency particulate air (HEPA) vacuums. Today's action is EPA's final action on all aspects of the May 6, 2010 proposal.

DATES: This final rule is effective [*insert date [60] days after date of publication in the Federal Register*].

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005-0049. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Hearing- or speech-impaired persons may reach the above telephone numbers through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Cindy

Wheeler, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566-0484; e-mail address: *wheeler.cindy@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*. Hearing- or speech-impaired persons may reach the above telephone number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you perform renovations of target housing or child-occupied facilities for compensation, dust sampling, or dust testing. You may also be affected by this action if you perform lead-based paint inspections, lead hazard screens, risk assessments or abatements in target housing or child-occupied facilities or if you operate a training program for individuals who perform any of these activities. “Target housing” is defined in section 401 of TSCA as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. Under this rule, a child-occupied facility is a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.

Potentially-affected entities may include, but are not limited to:

- Building construction (NAICS code 236), *e.g.*, single family housing construction,

multi-family housing construction, residential remodelers.

- Specialty trade contractors (NAICS code 238), *e.g.*, plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.

- Real estate (NAICS code 531), *e.g.*, lessors of residential buildings and dwellings, residential property managers.

- Child day care services (NAICS code 624410).

- Elementary and secondary schools (NAICS code 611110), *e.g.*, elementary schools with kindergarten classrooms.

- Other technical and trade schools (NAICS code 611519), *e.g.*, training providers.

- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), *e.g.*, dust sampling technicians.

- Lead abatement professionals (NAICS code 562910), *e.g.*, firms and supervisors engaged in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

On May 6, 2010, EPA proposed a number of revisions to the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule that established accreditation, training, certification, and recordkeeping requirements as well as work practice standards for persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities (Ref. 1). Specifically, EPA proposed requirements for dust wipe testing, clearance, allowing a certified renovator to collect a paint chip sample and send it to a recognized laboratory for analysis, minor changes to the training program accreditation application process, standards for e-learning in accredited training programs, minimum enforcement provisions for authorized state and tribal renovation programs, and minor revisions to the training and certification requirements for renovators. EPA has decided not to promulgate dust wipe testing and clearance requirements as proposed. However, EPA is promulgating several of the other proposed revisions to the RRP rule, including a provision allowing a certified renovator to collect a paint chip sample and send it to a recognized laboratory for analysis in lieu of using a lead test kit, minor changes to the training program accreditation application process, standards for e-learning in accredited training programs, minimum enforcement provisions for authorized state and tribal renovation programs, and minor revisions to the training and certification requirements for renovators. EPA is also promulgating clarifications to the requirements for vertical containment on exterior renovation projects, the prohibited or restricted work practice provisions, and the requirements for high-efficiency particulate air (HEPA) vacuums. Today's action is EPA's final action on all aspects of the May 6, 2010 proposal.

B. What is the Agency's Authority for Taking this Action?

These work practice, training, certification and accreditation requirements, and the State,

Territorial and Tribal authorization provisions are being promulgated under the authority of sections 402(c)(3), 404, and 407 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2682(c)(3), 2684, and 2687.

C. What are the Specific Provisions of this Action?

1. *Clearance and dust wipe testing requirements for renovations.* As discussed in this unit, EPA has decided not to promulgate clearance and dust wipe testing requirements as proposed in May 2010 for certain renovations covered by the 2008 Lead Renovation, Repair, and Painting (RRP) rule (Ref. 2).

a. *Background.* In promulgating the final 2008 RRP rule, EPA determined that renovation, repair, and painting activities, when performed in the presence of lead-based paint, create lead-based paint hazards. Section 402(c)(3) of TSCA directs EPA to revise its regulations governing lead-based paint inspections, risk assessments, and abatements (the Lead-based Paint Activities Regulations, or abatement regulations, Ref. 3) to apply to renovation and remodeling activities that create lead-based paint hazards. Accordingly, the 2008 RRP rule established accreditation, training, certification, and recordkeeping requirements as well as work practice standards for persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. Among other things, the work practice standards require renovation firms to follow specific requirements for containing the work area, refrain from using certain high-dust-generating work practices, and follow a specific cleaning protocol, including a step called “cleaning verification,” after concluding the paint-disturbing tasks involved in a renovation.

As discussed in the preamble to the 2010 proposal, EPA is particularly concerned about dust-lead hazards generated by renovations because of the well-documented toxicity of lead,

especially to younger children. For a more detailed discussion of the health effects of lead exposure, refer to information in the 2010 proposal (Ref. 1) and the 2008 RRP final rule (Ref. 2).

One of the more difficult issues in the 2008 RRP rulemaking was the issue of determining when a renovation work area has been properly cleaned and is ready for reoccupancy. After a lead-based paint abatement project, EPA's Lead-Based Paint Activities Regulations require the abatement contractor to achieve clearance. This means that the contractor must demonstrate, through dust wipe testing, that dust lead levels remaining in the abatement work area are below the clearance levels established in the 2001 rulemaking entitled "Identification of Dangerous Levels of Lead" under section 403 of the Toxic Substances Control Act (Ref. 4). Dust wipe samples for clearance purposes must be collected by a certified individual and analyzed by an entity recognized under the National Lead Laboratory Accreditation Program (NLLAP).

When promulgating the 2008 RRP rule, EPA considered requiring a similar process after renovations, but for various reasons, did not do so. EPA did not interpret its statutory mandate under TSCA section 402(c)(3) as simply expanding the scope of the Lead-based Paint Activities Regulations to also cover renovation activities. Rather, EPA stated, in the final 2008 RRP rule, its belief that Congress intended for EPA to make revisions to those existing regulations to adapt them to a different set of activities and a very different regulated community. In establishing the cleaning element of the work practice requirements for renovations, EPA primarily relied on the results of two studies, the "Electrostatic Cloth and Wet Cloth Field Study in Residential Housing" (Ref. 5) and the "Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities" (the "Dust Study," Ref. 6) to determine that the full suite of RRP work practice requirements, including containment, cleaning, and cleaning verification, was effective

at minimizing exposure to lead-based paint hazards created by renovation, repair, and painting activities.

EPA also considered various other factors as well as issues raised by commenters. Among these were the differences between abatement and renovation, the costs of dust wipe testing and clearance, the potential delay in obtaining results, and the likelihood that renovation firms would become liable for pre-existing dust-lead hazards. Abatements have only one purpose, to permanently eliminate lead-based paint or lead-based paint hazards, while renovations are performed for many reasons that often have nothing to do with lead-based paint. Concerns about the costs of dust wipe testing and clearance were brought to EPA's attention during stakeholder input opportunities provided by EPA before the proposed RRP rule was issued in 2006 and echoed by commenters on the 2006 proposed RRP rule. If EPA had required dust wipe testing and clearance after every renovation project, it would have made up a significant portion of the cost of smaller projects. In addition, dust wipe testing results may not be available for several days. If EPA had required traditional abatement-style clearance after renovations, the work area would not be able to be re-occupied while waiting for the laboratory results. Commenters also noted that requiring clearance after renovation jobs could, in some instances, result in the renovation firm being held responsible for abating all dust-lead hazards, including such hazards that may have existed in the area before the renovation commenced.

Other commenters on the 2006 proposed RRP rule thought that renovation work areas ought to be tested and cleared for re-occupancy in the same way that abatement work areas are cleared through the clearance process, including dust wipe testing. Many commenters believed that renovation firms should be required to demonstrate that no dust-lead hazards had been left behind in the work area. These commenters contended that the only effective way to do this is

through dust wipe testing and clearance. While EPA understood the issues raised by these commenters, and agreed with some of the points that they made, EPA remained convinced that the suite of RRP work practices would be practical for renovation firms to implement while effectively minimizing exposure to dust-lead hazards created by renovations. The RRP work practices are, in essence, requirements to ensure that renovators undertake traditional renovation activities – e.g., removal or modification of existing surfaces, containment and cleanup of dust and debris, and ensuring the job site is cleaned up – in a lead-safe way. EPA believes the RRP rule effectively minimizes exposure to hazards generated by renovation activities without imposing practices and disciplines that are outside the scope of traditional renovation activities. More information on the comments received and EPA’s decisions can be found in the preamble to the final 2008 RRP rule (Ref. 2).

b. *2010 Proposal.* Based on additional stakeholder input received after the final rule was issued, and an August 2009 agreement entered into with several environmental and children's health advocacy groups in settlement of their lawsuit challenging the final 2008 RRP rule, EPA agreed to consider whether some of the decisions made in 2008 with regard to dust wipe testing and clearance should be modified.

Accordingly, on May 6, 2010, EPA proposed to require dust wipe testing after many renovations covered by the RRP rule (Ref. 1). Under the 2010 proposal, dust wipe testing would have been required on uncarpeted floors, windowsills, and window troughs in the work area after the following types of interior renovations:

- Use of a heat gun at temperatures below 1100 degrees Fahrenheit.
- Removal or replacement of window or door frames.
- Scraping 60 ft² or more of painted surfaces.

- Removing more than 40 ft² of trim, molding, cabinets, or other fixtures.

After these renovations, the renovation firm would have been required to collect dust wipe samples and have them analyzed for lead content by an entity recognized under NLLAP. The renovation firm would then have been required to provide these results to the owners and occupants of the renovated property.

For another subset of jobs involving demolition or removal of plaster through destructive means or the disturbance of paint using machines designed to remove paint through high-speed operation, such as power sanders or abrasive blasters, EPA proposed to require the renovation firm to achieve clearance. This would have involved a demonstration, through dust wipe testing, that dust-lead levels remaining on uncarpeted floors, windowsills, and window troughs in the work area were below regulatory clearance levels. These clearance levels would have been identical to the clearance levels established for the lead-based paint abatement program, which are codified at 40 CFR 745.227(e)(8)(viii), *i.e.*, 40 µg/ft² on floors, 250 µg/ft² on interior windowsills, and 400 µg/ft² on window troughs, based on wipe samples. These additional requirements in the 2010 proposal were designed to ensure that lead-based paint hazards generated by renovation work are adequately cleaned after renovation work is finished and before the work areas are re-occupied.

c. This final rule. Maintaining the distinction between abatement and renovation activities has been an important issue throughout the rulemaking process for the 2008 RRP rule. As discussed in the preamble to the 2008 RRP rule, abatements and renovations are performed by different contractors for different purposes, although similar activities, such as window replacements, may be involved. Typically, when an abatement is performed, the housing is either unoccupied or the occupants are temporarily relocated to lead-safe housing until the

abatement has been demonstrated to have been properly completed through the clearance process. Carpet in the housing is usually removed as part of the abatement because it is difficult to demonstrate that it is free of lead-based paint hazards. Uncarpeted floors that have not been replaced during the abatement may need to be refinished or sealed in order to achieve clearance. Abatements have only one purpose--to permanently eliminate lead-based paint and lead-based paint hazards. In contrast, renovations other than interim controls are performed for reasons unrelated to lead-based paint or lead-based paint hazards. Renovations may be performed while the property is occupied or unoccupied, but occupants do not typically relocate pending the completion of the project.

EPA did not design or intend the RRP rule to address cleanup of pre-existing dust-lead hazards. While the cleaning requirements of the RRP rule will, in some cases, have the ancillary benefit of removing some pre-existing dust-lead hazards, the cleaning requirements were designed to effectively clean-up lead-based paint hazards created during renovation activities without changing the scope of the renovation activity itself. Accordingly, the RRP rule does not require cleaning of dust or any other possible lead sources in portions of target housing or child-occupied facilities beyond locations in and around the work area. Nor does the RRP rule require the replacement of carpets in the area of the renovation or the refinishing or sealing of uncarpeted floors. The approach in the RRP rule was designed to address the lead-based paint hazards created during the renovation while not requiring renovation firms to remediate or eliminate hazards beyond the scope of the work they were hired to do.

In addition, EPA has interpreted practicality in implementation to be an element of the statutory directive to take into account effectiveness and reliability. As discussed in the preamble to the final 2008 RRP rule, EPA believes that, given the highly variable nature of the regulated

community, the work practices required by the RRP rule should be simple to understand and easy to use. EPA is cognizant of the fact that the RRP rule applies to a range of individuals from day laborers to property maintenance staff to master craftsmen performing a range of activities from simple drywall repair to window replacement to complete kitchen and bath renovations to building additions and everything in between. Work practices that are easy and practical to use are more likely to be followed by all of the persons who perform renovations, and, therefore, more likely to be reliable and effective in minimizing exposure to lead-based paint hazards created by renovation activities.

The 2010 proposal for this rule was EPA's attempt to explore whether clearance and dust wipe testing requirements should be added to the RRP rule to provide additional protection for some renovations. EPA's intention was to do this without generally holding renovation firms responsible for abating pre-existing dust-lead hazards or creating requirements that would impair the overall reliability and effectiveness of the work practice requirements.

EPA received over 300 comments on its 2010 proposal. Members of the regulated community and other industry commenters were generally concerned that EPA had upset the balance it had struck in the 2008 RRP rule, arguing that a dust wipe testing or clearance requirement would have the effect of holding renovation firms responsible for pre-existing hazards, whether directly by regulation, in the case of the proposed clearance requirements, or indirectly by requiring firms to provide information on post-renovation dust lead levels to the property owner and occupant. While there was little support for dust wipe testing alone, commenters that supported the 2010 proposal generally thought that a clearance requirement should be imposed and expanded to most, if not all, renovations.

After carefully weighing the issues at stake and considering the concerns raised by

commenters, and as explained in greater detail below, EPA has concluded that, on balance, the information before the Agency does not support imposing a dust wipe testing or clearance requirement on renovations. In particular, EPA is convinced that the work practices established in the 2008 RRP rule are reliable, effective, and safe, and that imposing a dust wipe testing or clearance requirement is unwarranted.

Almost all of the commenters were opposed to the proposed provisions requiring only dust wipe testing after certain renovations. Members of the regulated community and other industry commenters argued that a dust wipe testing requirement would have the effect of holding renovation firms responsible for pre-existing hazards, albeit indirectly, by requiring firms to provide information on post-renovation dust lead levels to the property owner and occupant. This requirement would also have the effect of adding an element that is not generally considered a renovation activity, *i.e.*, taking samples for laboratory analysis, and indeed, would have to be performed by a third party or only after a renovator received training in a separate and distinct discipline—either as a dust wipe sample technician or a lead-based paint inspector. In addition, many argued that the Dust Study generally shows that the RRP work practices are effective at minimizing occupant exposure to dust-lead hazards created by renovations, so additional dust wipe testing or clearance requirements are unnecessary. These commenters noted that this is particularly true for the renovations for which EPA proposed to require only dust wipe testing, because those renovations were specifically tested in the Dust Study. In addition, commenters suggested that the categories of jobs for which dust wipe testing or clearance would be required were arbitrary and not based on sufficient evidence.

Some commenters, including several states, also questioned the utility and value of dust wipe testing in the absence of a clearance requirement. Some were concerned that property

owners and occupants would not understand the significance of the results of dust wipe samples that exceed the clearance standards or what steps they should take to protect themselves and their families. One argued that, in the absence of standards and required remedial actions, dust wipe testing would add expense and time to a renovation project without providing a concrete increase in protection for occupants. On the other hand, other commenters contended that the feedback provided by numerical dust wipe testing results would result in improved cleaning performance on the part of renovation firms. Some cited anecdotal evidence of poor contractor performance in other programs, such as the abatement program, in support of a contention that the RRP rule work practices would not be as effective at minimizing dust-lead hazards as they were in the Dust Study.

Additionally, after considering previous interpretations of the statutory requirements and the comments received on this specific issue, EPA is not convinced that dust wipe testing in the absence of a clearance requirement would be a safe, reliable and effective work practice within the meaning of TSCA Section 402. As commenters noted, provision of dust wipe testing results in the absence of a clearance requirement does not by itself reduce the amount of dust generated during or left behind following a renovation. Furthermore, dust wipe testing results alone are not part of the information that must be provided at the pre-renovation stage under Section 406(b) of TSCA, and providing this type of information is not typically considered a renovation work practice. Again, the dust wipe testing would either have to be done by a third party or by a renovator who has taken a course and been trained in a completely different discipline.

EPA believes these commenters raise valid considerations. In particular, EPA agrees that the Dust Study demonstrates that with respect to these very activities, the suite of RRP work practices reliably addressed the hazards created by the renovation. In addition, although EPA

attempted in its 2010 proposal to distinguish renovation activities that it thought warranted the addition of a dust wipe testing requirement from those that did not (and from those that warranted imposition of a clearance requirement), EPA acknowledges that its 2010 proposal lacked a strong basis for drawing these lines – a point made by many commenters. While some commenters urged the point that dust wipe testing would encourage better cleanup, and provided anecdotal support for that view, EPA has no record basis to judge the likelihood or frequency of this potential impact. This logic could potentially lead to requiring dust wipe testing for all jobs – a significant change in the existing rule that EPA is not prepared to make without better supporting evidence. Accordingly, upon the information before it, the Agency does not believe that a dust testing requirement alone is warranted. EPA notes that homeowners can arrange to have dust wipe testing done as part of a renovation (or at any time) if they would like information about dust-lead levels in their homes. EPA also notes that property owners can contractually elect clearance testing at the completion of a project. EPA's website has a page homeowners can use to locate certified lead inspection and abatement professionals and accredited training providers in their state (<http://www.epa.gov/lead/pubs/locate.htm>).

EPA also proposed to require that renovation firms achieve clearance for a subset of jobs involving demolition or removal of plaster through destructive means or the disturbance of paint using machines designed to remove paint through high-speed operation, such as power sanders or abrasive blasters. Nonetheless, EPA remained concerned about promulgating a requirement that could make renovation firms responsible for pre-existing conditions and fundamentally change the scope of the renovation activity itself. Therefore, to avoid making renovation firms replace carpets or refinish floors when they were not hired to do so, EPA proposed to allow a renovation firm to stop after two failed dust wipe tests on a particular surface if the firm was not

hired to refinish or replace that surface.

EPA was particularly concerned about these types of jobs because it had evidence that the work practices were not effective when machines designed to remove paint through high speed operation were operated without HEPA shrouds and created large quantities of dust. EPA was concerned that even if such machines were equipped with HEPA shrouds, the RRP work practices may not be effective at minimizing exposure to lead hazards created by the renovation. Additionally, EPA stated its belief that dust created by the demolition or removal of plaster was similarly difficult to clean and therefore the RRP work practices might not be effective at minimizing exposure to lead hazards created by the renovation.

With respect to the proposed clearance requirements, commenters generally fell into two camps. Commenters who were in “favor” of the 2010 proposal nonetheless generally argued that the proposed clearance requirements should be expanded to cover most if not all renovation activities because clearance is the only method to ensure that no lead hazards remain upon the completion of a renovation job. Commenters who opposed any type of clearance requirement argued again that it erased the distinction between renovations and abatements and made renovation firms responsible for pre-existing conditions. These commenters also questioned the relevance of the studies EPA cited in support of its 2010 proposal to require clearance after renovations involving demolition or removal of plaster through destructive means or the disturbance of paint using machines designed to remove paint through high-speed operation. The cited studies include EPA’s Environmental Field Sampling Study (EFSS, Ref. 7) and studies examining the effectiveness of HEPA exhaust control on power tools (Ref. 8). Many of the HEPA exhaust control studies addressed dusts not typically created during renovations regulated by the RRP rule, such as crystalline silica dust resulting from the grinding of concrete. Others

addressed surfaces and surface coatings not typically encountered during renovations covered by the RRP rule; one involved paint removal from automobiles. Notwithstanding EPA's 2010 proposal and requests for comment, EPA did not receive any additional information or data with respect to the dust or hazards created by these activities. Finally, on both sides of the issue, commenters did not favor the proposed provision allowing renovation firms to stop after two failed dust wipe tests, and, although some alternative suggestions were offered, none effectively addressed the competing considerations of occupant protection and not expanding the scope of the renovation work.

EPA recognizes that imposing a clearance requirement would be a departure from the balance struck in the RRP rule with respect to the distinction between abatement and renovations. Accordingly, in EPA's judgment, the Agency should be in a position to conclude with a fair amount of certainty that doing so was necessary in light of its obligation to promulgate work practices that take into account reliability, effectiveness, and safety. Here, EPA acknowledges that it does not have data to support its concern that dust created by destructive demolition of plaster may be similar in nature to dust generated by machines designed to remove paint through high speed operation, and thus would have the potential to overwhelm the RRP cleaning protocol. EPA also recognizes that the data on the efficiency of HEPA is only suggestive that there might be an issue concerning these practices. Again, the studies EPA reviewed suggested that HEPA exhaust control could reduce the airborne dust levels by 90-95%. As commenters pointed out, it is not clear the results of these studies are applicable to the home renovation setting, given the differences between the surfaces and paints in residential settings and the surfaces and paints involved in the studies. Even if the results were applicable, there is no direct evidence that the RRP lead safe work practices could not reliably

address the dust hazards created by the use of such power tools. Having received no additional information in this regard, EPA has determined that, among other things, the available information does not support a clearance requirement. Nevertheless, as discussed further in Unit II.C.7. of this preamble, EPA is adding a requirement that power tools be operated so that no visible dust or release of air occurs outside of the shroud or containment system. This requirement will work to mitigate the concerns EPA had with respect to the efficiency of power tool dust collection systems and the possibility that such tools might overwhelm the containment and specialized cleaning protocols of the RRP work practices.

In an effort to ensure that the proposed clearance requirement would not typically result in holding renovation firms responsible for abating pre-existing dust-lead hazards, EPA included a provision to allow firms to stop the clearance procedure after two failed clearance tests on a particular surface unless they had also contracted to refinish the surface. Upon further reflection, EPA is concerned about the potential ineffectiveness of this effort, because it would likely still result in some renovation firms having to clean up pre-existing dust-lead hazards. At the same time, the proposed provision would not result in the certainty regarding elimination of dust-lead hazards that is the defining characteristic of a clearance requirement. In addition, the practical effect of such a provision is that the proposed clearance requirement would, in fact, often result in a dust wipe testing requirement. As such, it raises many of the same issues and concerns that ultimately persuaded EPA not to promulgate just dust wipe testing requirements.

Furthermore, as stated above, EPA does not believe the record before it strongly supports the line-drawing in its 2010 proposal, which would have resulted in a clearance requirement for some renovations, a dust wipe testing requirement for others, and no testing for the rest of the renovations covered by the RRP rule.

. In revising the abatement regulations to apply to renovations, EPA has sought to keep the renovation requirements relatively simple and easy to apply, while attaining the overall objective of minimizing exposure to dust-lead hazards generated by renovation activities. EPA is concerned that the proposed three-tier system would add a level of complexity to the rule that is undesirable. While EPA could potentially draw different lines in this final rule, or promulgate a requirement that all jobs achieve clearance, EPA does not believe it has a strong basis to do so.

The combination of these factors has convinced EPA that imposing a clearance requirement is unwarranted. The best evidence that EPA has of the effectiveness of the work practice standards is the Dust Study, and it demonstrates that overall the full suite of RRP work practices is effective at minimizing exposure to dust-lead hazards created by renovations. Without more, EPA is unable to conclude that the RRP work practice promulgated in 2008 should be significantly altered.

Additionally, a variety of commenters, including industry representatives and some states, suggested that EPA had issued its 2010 proposal to require dust wipe testing and clearance too soon after promulgation of the 2008 RRP rule. At the time that the 2010 proposal was issued, full implementation of the 2008 RRP rule had only just begun. Commenters contended that renovation firms were still in the process of working through how to achieve compliance with the rule on a daily basis and that EPA should wait to add new requirements until firms were generally comfortable with the requirements promulgated in 2008. Commenters also argued that EPA should not make a determination that additional requirements are needed without first carefully assessing the status and impact of the existing RRP rule when fully implemented. EPA agrees with the general principle expressed by these commenters—that it is premature to impose significant additional work practice requirements for renovations already covered by the RRP

rule, particularly given the information before the Agency. EPA also agrees that many renovation firms are still determining what the RRP rule requires from them on renovation projects. EPA also acknowledges that there are practical implementation issues with promulgating a significant change so soon after thousands of renovators have become certified renovators, and have taken the required training, which did not include information on the proposed dust wipe testing or clearance requirements.

Some commenters suggested that EPA concentrate on RRP education and outreach at this time, rather than on additional requirements. EPA agrees that outreach and education on lead poisoning in general, and the link between renovations and increased blood lead levels in particular, continues to be important. As part of the RRP program's Lead-Safe Certified media campaign, EPA developed and made available to the public outreach materials aimed at both contractors and consumers. The materials include a Public Service Advertising (PSA) advertisement aimed at contractors, banners for web sites, sample articles for magazines, newsletters or other publications to help inform contractors about the rule, post cards and buck slips to stuff into mailers, as well as an informational brochure about the rule for building managers. EPA has also developed fact sheets about the RRP rule that hardware or paint supply stores can hand out to their customers to inform them of the regulatory requirements. All of this information is available to the public on EPA's web site at <http://epa.gov/lead/pubs/lscp-press-materials.htm>.

The Agency has also developed outreach materials for consumers in order to build demand for lead-safe certified firms among the public. The consumer outreach materials include consumer print advertisements, PSA radio advertisements in English and Spanish, and a fact sheet about the RRP rule that contractors can provide to consumers to inform them about the

advantages of hiring lead-safe renovation firms. The consumer outreach materials are also downloadable from EPA's web site at <http://epa.gov/lead/pubs/lscp-consumers.htm>.

Finally, in an effort to raise awareness of the consequences of lead poisoning among parents and pregnant women who live in homes built before 1978, the Coalition to End Childhood Lead Poisoning, EPA and HUD joined the Ad Council in April 2010 to launch a national multimedia PSA campaign. As stated in the PSA campaign press release, the most common pathways for lead poisoning are deteriorating lead-based paint (on older windows, doors and trim, or walls) or improperly-performed renovation, repair and painting activities that cause paint to chip, peel, or flake.

EPA will continue to evaluate and consider additional outreach and educational opportunities to improve property owner and occupant understanding of dust-lead hazards created by renovations. EPA also will continue to monitor implementation of the RRP rule. If future information, studies, or data indicate that the existing RRP rule work practices are not reliable, safe, and effective, EPA will consider whether additional requirements should be proposed.

2. Elimination of provision allowing clearance in lieu of cleaning verification. In the 2010 proposal, EPA proposed to eliminate the existing provision that allows renovation firms to skip the cleaning verification part of the mandatory cleaning protocol if another Federal, State, or local law or regulation, or the contract between the renovation firm and the property owner requires the renovation firm to use qualified entities to perform dust wipe testing and requires the renovation firm to achieve clearance. The rationale for eliminating this provision was based on the fact that, as discussed in the preamble to the 2010 proposal and the preamble to the 2008 RRP final rule, cleaning verification is an integral part of the whole suite of RRP work practices.

The Dust Study demonstrates that these practices, when observed as a whole, are effective at minimizing exposure to dust-lead hazards generated by renovations.

EPA received only a handful of comments on this aspect of the 2010 proposal.

Commenters thought that removing this provision from the RRP rule would make the rule inconsistent with the HUD regulations or State or local laws. Some believed that requiring both cleaning verification and clearance was unnecessarily burdensome, and pointed out that persons trained in lead-safe work practices had been achieving clearance without cleaning verification for a number of years now. While EPA does not agree with all of these assertions, EPA does agree that it is unnecessary to require renovation firms who must achieve clearance to follow the specific cleaning verification protocol. After all, these firms must continue to clean until they achieve the clearance standards. As discussed in the preamble to the 2010 Proposal, and mentioned by some commenters specifically in reference to this provision, contractors who receive the regular feedback provided by a clearance requirement have learned how to clean so that they typically achieve clearance on the first attempt. Specifically, in its Evaluation of the HUD Lead-Based Paint Hazard Control Grant Program (Ref. 10), HUD noted that the rate of passing initial clearance was associated with repetition of lead hazard control activities.

Therefore, EPA is retaining the provision that allows the cleaning verification step to be skipped if the renovation firm must also achieve clearance. However, EPA believes that renovation firms whose projects are subject to clearance only as a result of contractual requirements are less likely to gain the repetitive experience of cleaning sufficiently so as to meet clearance with few cleaning cycles, so EPA encourages property owners who include clearance in their renovation contracts to also require renovation firms to perform cleaning verification. EPA also notes that States and Tribes are free to include both clearance and cleaning verification in their laws and

regulations.

3. *Paint chip sample collection.* In May 2010, EPA proposed to give certified renovators another option for determining whether lead-based paint is present on components to be affected by a renovation. This option would allow certified renovators to collect paint chip samples from components to be affected by a renovation instead of using test kits to test the paint on the components. The samples would be required to be sent to an entity recognized under the NLLAP for analysis. In issuing this 2010 proposal, EPA reasoned that it would be easy to teach certified renovators to collect paint chip samples in the renovator course and this would provide maximum flexibility for certified renovators and renovation firms.

EPA received a number of comments on this part of its 2010 proposal. Some commenters supported this option because they felt that it is easy to properly collect a paint chip sample, and they agreed that this would provide additional needed flexibility for certified renovators and renovation firms. One commenter stated that, as a homeowner, he had been instructed by an NLLAP laboratory over the telephone on how to properly collect a paint chip sample and forward it to the laboratory for analysis. This experience led him to believe that it would be feasible to include in the renovator course instruction on how to collect a paint chip sample and forward it for analysis. Other commenters did not support this aspect of the 2010 proposal because they believe that only certified inspectors or risk assessors should be permitted to collect paint chip samples or make determinations about the presence or absence of lead-based paint. Several noted that this would conflict with State laws that prohibit anyone other than a certified inspector or risk assessor from sampling for lead-based paint. Some commenters expressed concern about the length of the renovator course, and the ability to add the additional information on paint chip collection, including information on chain-of-custody issues and

laboratory submission procedures, without lengthening the course beyond 8 hours. Others noted that renovators are already being taught many of the necessary skills during instruction on how to properly use test kits.

Because renovator training courses are already required to include training in how and where to use test kits, and the associated recordkeeping requirements, EPA agrees with those commenters who believed that it would take very little additional time to also provide renovators with specific training in how to collect a chip sample and submit it for analysis. The selection of locations to test and the recordkeeping requirements would be identical whether test kits or paint chip sampling is used, except that the laboratory report would also have to be maintained along with the records associated with the renovation. EPA also agrees with those commenters who thought that this option would provide additional important flexibility. EPA is promulgating the proposed option allowing certified renovators to collect paint chip samples from painted components that will be disturbed by a renovation and submit those samples to an NLLAP-recognized entity for analysis. EPA will modify the model certified renovator training course to add the necessary information on sample collection, chain-of-custody, and laboratory submission procedures. One commenter wondered how renovators who have already taken the training to become certified would learn about this option and how to use it. EPA will post the information developed for the renovator training course on its website. EPA will also e-mail this information to certified renovation firms that provided an e-mail address on their certification applications. As pointed out by several commenters, paint chip sample collection, by itself, is a relatively simple thing to learn and EPA believes that certified renovators who have already been trained in how to properly use a test kit will be able to learn how to properly collect a paint chip sample and submit it to an NLLAP-recognized entity from the material EPA posts on its website.

At least one commenter pointed out that EPA would also have to modify the recordkeeping requirements to accommodate this option and include information specific to paint chip sample collection, such as component and location tested, identity of the NLLAP entity analyzing the samples, and the sample results. Accordingly, EPA is modifying 40 CFR 745.86(b)(1) to add a new subparagraph (iii) that requires records pertaining to paint chip sample collection and analysis, including a description of the components that were sampled, and the locations sampled, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample. EPA is also modifying 40 CFR 745.86(b)(6) to include a certification by the certified renovator that, if paint chip samples were collected, that the samples were collected from the components in the locations specified, that the samples were submitted for analysis to the identified NLLAP-recognized entity, and that the sample results were as specified.

This option does not make certified renovator the equivalent of a certified lead-based paint inspector. Certified renovators must still test each affected component, they are not permitted to exclude components based on similar painting histories or perform random paint sampling in multi-unit buildings. Just as with the current provisions for test kit use, in those states that do not permit persons other than certified inspectors or risk assessors to sample or test for lead-based paint, certified renovators will not be able to exercise this option.

4. *Training provider accreditation.* In May 2010, EPA proposed a number of minor changes to the training provider accreditation provisions. EPA received very little public comment on these proposed amendments, and EPA is promulgating these amendments as proposed.

a. *Documentation of personnel qualifications.* The first of these minor amendments

involves submission of documentation of training program manager and principal instructor qualifications along with training provider applications for accreditation. Training providers who wish to provide renovator, dust sampling technician, or lead-based paint activities training for Federal certification purposes must apply for and receive accreditation from EPA. To become accredited, a provider must employ a training program manager as well as principal instructor(s) who meet certain education, training and work experience requirements. The training provider must indicate on its application for accreditation that the training program manager and principal instructor(s) meet these requirements; however, the 2008 RRP rule did not require documentation (*e.g.*, resumes) regarding the qualifications of these individuals to be submitted to EPA. The Agency believes it is important to review this information when determining whether to approve a training provider application. When EPA reviews applications for accreditation, it is common for the Agency to request this documentation from training providers in order to verify that the training program manager and principal instructor(s) have the proper qualifications. Requesting this information takes time and can delay the review of an application. Therefore, the Agency will now require training providers to submit documentation regarding the qualifications of the education, training and work experience of training managers and principal instructors with their applications for accreditation. Only one commenter commented on this provision, expressing general support for the change.

b. *Submission of training course materials.* EPA is also promulgating other proposed changes to the required materials that must be submitted along with an accreditation application. EPA received only one comment expressing general support for this proposed change. Specifically, to become accredited, a training provider must submit a copy of its training course materials with its application for accreditation for review by the Agency. If a training provider

chooses to use the model course developed by EPA or a course approved by an authorized State or Indian Tribe, then the provider is not currently required to submit the course materials with its application. Instead, the training provider indicates on its application that it will use the EPA model course or a course approved by an authorized State or Indian Tribe. Authorized States and Indian Tribes can have renovation or abatement programs that are significantly different from the EPA-administered program which would be reflected in their approved course materials. In these instances, a training course approved by the State or Indian Tribe may not be sufficient for the purposes of training someone on the requirements of the Federal program.

Accordingly, the Agency proposed to require training providers who apply to EPA for accreditation and wish to use a course approved by an authorized State or Indian Tribe to submit the course materials for EPA review. EPA reasoned that this will give the Agency the opportunity to identify and address any significant differences between the requirements of EPA and the authorized program that may appear in the course so the Agency can ensure that EPA-accredited training providers are using appropriate course materials.

EPA is promulgating this provision as proposed. This provision only applies to those training providers who wish to use a training course approved by an authorized State or Indian Tribe that is different from the EPA model training course. Training providers wishing to use the EPA model courses need not submit those materials with their applications.

c. Role of principal instructor. EPA is promulgating a proposed minor amendment involving a clarification of the role of principal instructors in teaching courses. The regulation, at 40 CFR 745.227(c)(3), states that principal instructors are responsible for the organization of their courses and oversight of the teaching of all course material. The regulations also define “principal instructor” as “the individual who has the primary responsibility for organizing and

teaching a particular course.” Nonetheless, the rule also allows training program managers to designate experts in a particular field (e.g., doctors or lawyers) as guest instructors, on an as needed basis, to teach discrete portions of the course. EPA interprets these provisions to require a principal instructor to be present and primarily responsible for teaching the course, although guest instructors may be used to teach some portion(s) of the course. Principal instructors are also responsible for the quality of the instruction delivered by the guest instructors. To ensure that the regulation is clear on this point, EPA proposed to amend 40 CFR 745.225(c)(3) to state that principal instructor(s) are primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he has been designated the principal instructor. EPA received two comments on this provision, both supported the change, and one specifically stated a belief that having principal instructors present while guest lecturers teach would improve the content of many courses. EPA agrees with these commenters and EPA is promulgating this provision as proposed.

d. *Application amendments.* EPA is promulgating as proposed another minor amendment involving a specific provision requiring training providers to amend their accreditation application whenever there is a change to the information presented in their most recent accreditation or re-accreditation application. The RRP rule includes requirements for amending the certification of a renovation firm. Firms must submit an amendment within 90 days of the date that a change occurs to information in its most recent application for certification or re-certification. Examples of amendments include a change in the firm’s name without transfer of ownership, or a change of address or other contact information. To amend its certification, a firm must submit an application, noting on the form that it was submitted as an amendment. The

firm must complete the sections of the application pertaining to the new information, and sign and date the form. EPA has interpreted the training provider accreditation regulations to require accredited training providers to submit amended applications whenever there is a change to the information provided in the training provider's most recent application for accreditation or re-accreditation, including information regarding the training manager and any principal instructor(s) teaching courses offered by the training provider. However, the existing regulations do not specify a time limit for submitting an amendment, so EPA proposed to require training providers to submit amendments within 90 days of the date a change occurs to information in each provider's most recent application. As proposed, if the training provider does not amend its most recent accreditation application within the 90-day time period, it must stop providing training until the accreditation application is amended. EPA also proposed to approve or disapprove amendments for a new training manager, any new or additional principal instructors, or any new permanent training location within 30 days of the date EPA receives the amendment. This 30-day time period will give EPA time to check the qualifications of the training manager(s) or principal instructor(s) before the training manager begins managing or the principal instructor begins teaching a course. This 30-day time period also gives EPA time to verify the suitability of a new permanent training location by visiting the location. As proposed, the training provider would not be permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location until EPA either approves the amendment or 30 days has passed. EPA also proposed to clarify that no fee will be charged for accreditation application or certification amendments. EPA received no comments on this proposed amendment.

Because qualified training managers and principal instructors are critical to ensuring

effective training, it is important for EPA to have the ability to review their qualifications before they begin to provide training. If unqualified individuals provide training, it could be very difficult to determine whether the trainees received adequate training and resolve any concerns over the quality of the training. Requiring retraining would not only inconvenience the training provider, it would also be burdensome for the trainees themselves. Therefore, EPA is promulgating the 30-day review period for new training managers and principal instructors as proposed, with several modifications. The first relates to the calculation of the 30-day review period. EPA is clarifying that the 30-day period begins upon submission of a complete application for amendment. Thus, if the amendment involves a new training manager or principal instructor, the training provider must fill out the section of the application that identifies the training provider and the sections that pertain to the new training manager or principal instructor, sign the application, and include the individual's qualifications along with the application for amendment. If the application does not include these items, then the 30-day review period would not begin until the missing information is submitted.

In addition, in further reviewing this proposed provision, EPA has decided that additional flexibility would be beneficial for training providers. If the training provider wishes to use a training manager or principal instructor who has already been reviewed by EPA as part of a successful application for training provider accreditation under 40 CFR 745.225, whether for that training provider or another, the training provider may do so on an interim basis without delay. The training manager or principal instructor must still meet the qualifications for the position as described in 40 CFR 745.225(c)(1)-(2). If, within 30 days of the date that the training provider begins using such an individual as a new training manager or principal instructor, EPA determines that the individual should not be used in such a capacity, EPA will provide written

notice to the training provider. The training provider must stop providing training under the new training manager or principal instructor upon receipt of written notice from EPA.

With respect to new permanent training locations, EPA is also concerned that a poor choice of location could negatively affect the quality of training. For example, if a location is chosen that does not have a suitable surface for performing cleaning verification, trainees would be unable to experience actually doing, during the hands-on portion of the course, something that will be an important part of their responsibilities as certified renovators. However, EPA believes that the choice of training location does not, in most cases, have as big of an impact on the quality of training as the training manager or the principal instructor. During the accreditation process for new training providers, it has been EPA's practice to review the qualifications for each and every training manager and principal instructor named on an application. In contrast, where a training provider has identified multiple permanent training locations in its application, EPA has chosen to visit a sample of locations, rather than each and every location. In addition, EPA has been approving traveling training providers based on the criteria that the providers will use to select a training location, a demonstration of the hands-on training, and an examination of the equipment the providers plan to use in training. Therefore, EPA will allow training providers to use new permanent training locations on an interim basis for 30 days. If, during that 30 days, EPA determines that the location is not adequate, the training provider must stop using that location upon written notice from EPA.

e. *Hands-on training requirements.* Another minor amendment involves the topics for which hands-on training is required in the renovator and dust sampling technician courses. The regulations at 40 CFR 745.225 includes requirements and procedures that training programs must follow to become accredited in order to provide instruction in lead-based paint courses.

Minimum requirements for training curricula are found in this section, which lists course topics that must be included in the different training courses with an indication of the topics that require hands-on instruction. However, EPA inadvertently omitted indicating which course topics required hands-on training for the renovator and dust sampling technician disciplines.

Accordingly, EPA proposed to identify in 40 CFR 745.225(d) which topics in the renovator and dust sampling technician courses require hands-on training. In further clarification, EPA also proposed to add a sentence to 40 CFR 745.225(e)(2) stating that refresher courses for all disciplines except project designer must include a hands-on component.

EPA received several comments on this aspect of the 2010 proposal. Two commenters supported the proposed topics for hands-on training for renovators and dust sampling technicians. Another commenter wondered why report preparation would be a required hands-on topic for dust sampling technicians when it has never been a hands-on topic for the other disciplines that must prepare reports. While it is true that hands-on training in report preparation is not required for most lead training disciplines, it is required for the inspector discipline. Thus, certified inspectors and certified risk assessors, who must successfully complete both the inspector course and the risk assessor course, receive hands-on training in report preparation. EPA believes that report preparation for dust sampling technicians is likewise important enough to warrant hands-on training in how to do it properly. Accordingly, EPA is finalizing the required hands-on training topics as proposed. Renovator trainees must receive hands-on training in using test kits, renovation methods that minimize creation of dust and lead-based paint hazards, containment and cleanup methods, and cleaning verification. Dust sampling technician trainees must receive hands-on training in dust sampling methodologies and report preparation.

EPA received two comments specifically on the proposed addition of a statement that all refresher training courses, with the exception of the project designer refresher course, must include hands-on training. One commenter was an environmental advocacy group, the other an industry trade association. Neither commenter supported this aspect of the 2010 proposal; they thought that requiring hands-on training for renovator refresher courses would limit the availability of refresher training and increase costs unnecessarily. Both commenters thought that enough information could probably be conveyed in a distance learning or e-learning setting to warrant dispensing with the hands-on requirement for renovator courses. The environmental advocacy group pointed out that EPA's current model refresher training course for renovators contains two required hands-on skill sets—test kit usage and cleaning verification. This commenter felt that this was appropriate, given that previously-trained individuals are still taking advantage of the “grandfathering” provision that allows them to successfully complete an accredited renovator refresher course to become certified renovators. Those individuals would not have had previous training in those two skills, so hands-on training would be necessary. However, once the grandfathering provision is no longer available, as discussed later in this section of the preamble, all certified renovators would have had hands-on training in these skills. While EPA agrees with this commenter that, for now, it is particularly important for renovator refresher courses to include hands-on training in test kit use and in cleaning verification, EPA disagrees that hands-on refresher training is unnecessary. A hands-on component for refresher courses will help ensure that certified renovators remain competent in the skills needed to comply with the RRP rule, including test kit use, containment, and cleaning (including cleaning verification). Therefore, EPA is finalizing the proposed amendment to 40 CFR 745.225(e)(2) that specifically states that hands-on training is required for all refresher courses except project

designer. EPA plans to re-evaluate the renovator refresher course after the grandfathering provision sunsets, but before the currently-certified renovators are due for refresher training. At that time, EPA will consider whether hands-on training is still necessary and appropriate for renovator refresher training.

f. *E-learning*. As stated in the 2010 proposal, web-based training and other types of alternative training delivery are permitted under both the Lead-based Paint Activities Regulations and the RRP rule. An EPA model on-line renovator course that may be used to deliver the classroom portion of the renovator course is available. While such alternative training delivery options cannot be used to deliver required hands-on training, EPA encourages training providers to make use of such options where appropriate to increase access to training and make it more affordable. Web-based training courses are considered separate courses and a separate application fee is required for each.

EPA's model electronic training course contains certain basic administration and delivery requirements. These include assigning a unique identifier to each student, to allow the training provider to track student course progress and completion. In addition, there are knowledge checks for each chapter, which must be completed before the student can go on to the next chapter, and a final test for the electronic learning portion which consists of at least 20 questions. Finally, students must be able to save or print an uneditable copy of a record showing completion of the electronic learning portion of the course. In May 2010, EPA proposed to incorporate these requirements into 40 CFR 745.225 to ensure that all training providers wishing to use electronic learning for the classroom portions of lead-based paint courses are aware of these requirements and plan their course development accordingly. EPA requested comment on a variety of topics, including the number of questions in the course test and the score required to pass.

EPA received several comments on this aspect of the 2010 proposal. Some commenters were concerned with verifying the identity of persons logging into e-learning courses. Several noted that, because it is impossible to verify with certainty the identity of persons completing online training, an in-person final course test is necessary to ensure that the trainee is adequately trained. In this final rule, EPA is amending 40 CFR 745.225(c)(6) to explicitly require e-learning training providers to assign a unique identifier to each student in order to track the student's progress through the course. EPA believes that this requirement, along with the existing requirement that the trainee participate in the hands-on training and take the final course test in person, will provide reasonable assurance that the same person has completed all of the portions of the course. In response to these commenters, EPA is modifying the regulations to specifically state that e-learning or other alternative delivery methods cannot be used for the hands-on training, the final course test, or the proficiency test, if one is given.

Commenters also expressed concern that the EPA model online course could be completed in as little as one hour, which could mean that a person could become a certified renovator with only 3 hours of training. EPA disagrees with these commenters. The current model course posted on the EPA website is not a functioning course and does not contain the background learning management system (LMS) which tracks the student's progress and requires satisfactory completion of the knowledge checks and the final test. Therefore, the time it takes to page through the model course is not representative of the time it would take to successfully complete an accredited e-learning course. Assuming that 2 training hours are spent on hands-on training, 40 CFR 745.225(c)(6)(vi) requires a minimum of six 50 minute training hours or 5 hours of classroom time for renovators. This requirement applies equally to traditional classroom settings as well as to e-learning courses offered for accreditation. While

EPA realizes that renovator trainees will not all proceed through an e-learning course at the same pace, an e-learning course offered for accreditation must be generally designed so that an average trainee takes approximately 5 hours to proceed through the course, including all of the knowledge checks and the course test.

One commenter thought that EPA's proposed requirement of an 80% minimum passing score on the course test for the online course was too restrictive. Another commenter disagreed, reasoning that an 80% minimum passing score was reasonable but that a 100% passing score would be too restrictive, because it would likely result in students being penalized for poorly-worded questions or alternate interpretations, regardless of the state of the student's knowledge. This commenter thought that it was appropriate to have a higher passing score requirement for the e-learning portion of a training course, because the student would have an opportunity to review the material and retake the test. EPA agrees with the second commenter. The 80% minimum passing score is intended to demonstrate mastery of the subject and lower scores do not achieve this goal. If students do not pass the test, they must review the material and try again. To ensure that, just as in conventional testing, students using electronic means to take the test do not receive feedback on their answers until after they complete and submit the test, the electronic testing provision at 40 CFR 745.225(c)(6)(viii)(D) explicitly prohibits such interim feedback, a feature contained in some websites.

One commenter suggested that EPA consider separately accrediting entities that provide online training and entities that provide hands-on training. The commenter argued that developing an online course is a capital-intensive project that requires a large number of trainees to recover the costs, so relatively few entities are likely to undertake online course development. In contrast, the commenter stated that the delivery of hands-on training must be more local and

mobile, it requires a smaller capital investment, and each entity may have relatively few trainees. EPA recognizes that this may be the case, at least for now, while EPA is administering the RRP program in most States. However, this may change as more States become authorized and impose requirements for training that may differ from the EPA requirements. In any event, as the commenter notes, EPA has developed a streamlined process to allow accredited training providers to add an e-learning component to their accreditation by using an already developed and accredited online course. This allows accredited training providers to offer online training without having to make a large capital outlay to develop a course. EPA continues to believe that the training provider who issues the final course completion certificate to a trainee, thus conferring certified renovator status on the trainee, must be responsible for ensuring that the student has completed all of the required training. EPA does not offer partial accreditations, or accreditation for a portion of a course.

On a related topic, this commenter thought that it would be burdensome to require the hands-on training provider to maintain records of the specific times each student logged in to the online portion of the course, each student's progress, and completion data. The commenter believed that, in the case where the online provider and the hands-on provider are separate entities, working under a contractual agreement to present an entire training course, it would be relatively easy for the online provider to maintain the records. In contrast, the commenter thought that it would be much more burdensome for EPA to require that the hands-on provider download or otherwise take possession of these records. EPA disagrees with this commenter, because EPA believes that the amount of data associated with this particular requirement for each trainee is not substantial. However, if a particular accredited training provider felt otherwise, the provider could contract with the provider of the online training to store the

records. Although the accredited training provider would remain ultimately responsible for being able to produce those records, as long as the training provider is able to produce them in response to a request from EPA, EPA would consider the training provider in compliance with the recordkeeping requirements.

One commenter provided a number of specific comments on EPA's proposed requirements for e-learning courses. First, the commenter thought that the requirement for knowledge checks for each module of the course was too inflexible, and that it could be difficult to determine what a module is for purposes of knowledge checks. The commenter suggested that EPA instead require periodic knowledge checks. EPA agrees with this comment and is promulgating a requirement for periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course. This would be 16-24 knowledge checks over the entire course. This commenter also thought that the requirement that a student be able to generate an uneditable copy of an e-learning course completion certificate too stringent. The commenter pointed out that almost anyone reasonably familiar with computers could alter a secure PDF, image, or word processing file through the print function. EPA will add language to the proposed provision at 40 CFR 745.225(c)(6)(viii)(E) to clarify that EPA merely meant that the certificate must not be susceptible to easy editing. A secure PDF file would comply with these requirements. Allowing students to generate and print the course completion certificate provides them with reasonable certainty that they have completed the e-learning portion of the course before attempting the hands-on portion. EPA recommends that accredited training providers verify through other means, such as the e-learning progress records, that each student who completes the hands-on training has also completed the online portion of the course before training providers issue the final course completion certificate.

g. *Combined refresher courses.* In the 2010 proposal, EPA requested comment on whether training providers should be allowed to provide a combined Abatement Worker/Renovator refresher course or a combined Abatement Supervisor/Renovator refresher course or both. After the 2008 RRP rule was promulgated, EPA received input from the regulated community and others indicating that many abatement contractors are likely to also become certified renovation firms. If this is the case, it would be advantageous for such firms to be able to send their employees to combined refreshers so that the employees would more readily be able to keep up their dual certifications. EPA requested comment on the likelihood that this will be the case, and, if combined refreshers are desirable, whether the different certification time periods for individual abatement certification (3 years) and individual renovator certification (5 years) should be harmonized and, if so, how. EPA received two comments on this topic; both commenters supported the idea of combined refresher courses and thought they would provide increased flexibility for industry. One commenter thought that the certification time periods should be harmonized to 3 years for all disciplines because the commenter believed that 5 years was too long to go without a refresher. The other commenter did not think that harmonization was necessary, because the abatement worker or supervisor would just take the combined refresher every 3 years to meet the shorter certification periods in the Lead-based Paint Activities Rule. EPA agrees with these commenters that combined refresher courses may be beneficial. While the current regulations permit training providers to offer refresher courses sequentially, *e.g.*, a 4-hour renovator course on the afternoon of one day, followed by an 8-hour worker course the next day, taking the courses sequentially would result in some duplication of training topics for persons certified as both renovators and abatement workers. On the other hand, EPA is not certain that appropriate refresher topics for both disciplines could be covered in a single 8-hour

day. EPA plans to evaluate the content of its supervisor, worker, and renovator refresher courses to determine what an appropriate combined course length might be. Depending on the results of this evaluation, EPA will consider amending these regulations to establish course length requirements for combined refresher courses.

h. *Recordkeeping.* Another amendment proposed in May 2010 involves recordkeeping requirements for training providers. Previously, training providers were required to keep training records for 3 years and 6 months. This length of time was chosen because of the length of individual certification periods for lead-based paint activities, which can be as long as 3 years and 6 months including interim certification. However, the renovator and dust sampling technician certification periods are 5 years, with no interim certification. Therefore, in order to ensure that the training records from the previous training course are available for certified renovators and dust sampling technicians taking refresher courses, EPA proposed to increase the recordkeeping period applicable to these disciplines to 5 years. EPA received two comments on this aspect of the 2010 proposal, both commenters thought that the recordkeeping requirements for all disciplines should be increased to 5 years. These commenters thought it would be less confusing for training providers if there was one period applicable to all. One commenter pointed out that EPA had extended the certification period for renovators trained before April 22, 2010 to July 1, 2015, so the training records for those trainees ought to be kept for as long as their certification lasts. This commenter suggested that EPA require training records to be kept for 5 years or until the expiration of certification resulting from the training, whichever is longer. While EPA agrees that it may be easier for training providers to keep records for the same length of time regardless of the discipline, EPA does not believe that it is necessary to make this a requirement. Training providers who prefer to have one single recordkeeping process can

always choose to maintain their records for 5 years across the board. Therefore, EPA is promulgating the increased recordkeeping requirement for providers of accredited renovator and dust sampling technician training as proposed. EPA also agrees with the commenter who suggested that there be a longer recordkeeping requirement for renovator training courses offered before April 22, 2010. Accordingly, EPA is also promulgating a requirement that records for renovator training courses completed before April 22, 2010 must be kept until July 1, 2015.

i. *Trainee photographs.* EPA also proposed certain minimum standards for the trainee photographs that must appear on renovator and dust sampling technician course completion certificates. Accredited training programs are required to issue a course completion certificate for each person who passes a training course. A variety of information is required to be on the certificate including the name of the course, the name and address of the student, and contact information for the training program. Course certificates for renovators or dust sampling technicians must include a photograph of the student, but the regulation does not include size requirements or other specifications for the photograph. Since publishing the 2008 RRP rule, the Agency has been asked if there is a minimum size for the photograph. EPA believes that it would be beneficial to have minimum standards for the photograph in order to ensure that the person in the photograph is recognizable. EPA proposed to require that the photographs on course completion certificates be an accurate and recognizable image of the trainee and at least one square inch in size. EPA also requested comments on whether the image quality requirements should be more specific, *e.g.*, more quantitative. EPA received several comments on this provision. Commenters generally supported the proposed requirements, but did not favor additional requirements, such as quantitative requirements for image quality, as they were concerned about the burden associated with such additional requirements. EPA agrees with

these commenters that the proposed requirements are sufficient. Therefore, EPA is promulgating the image quality requirements as proposed.

j. *Clarifying changes to 40 CFR 745.225.* Finally, as stated previously, 40 CFR 745.225 includes requirements and procedures that training programs must follow to become accredited in order to provide instruction in renovator, dust sampling technician, and lead-based paint activities courses. The final 2008 RRP rule amended §745.225 to cover persons who provide or wish to provide renovator or dust sampling technician training for the purposes of the RRP rule. There are some instances where the regulations do not specifically mention the renovator or dust sampling technician courses even though the regulations apply to those courses. For example, 40 CFR 745.225(c)(14) explains the requirements which a training provider must follow when submitting notification to EPA after the completion of a training. However, the conforming changes, *i.e.*, to replace “lead-based paint activities courses” with “renovator, dust sampling technician, and lead-based paint activities courses,” were not made to every subparagraph even though all the requirements of that section apply to those courses. Consequently, EPA proposed to clarify that the requirements in 40 CFR 745.225 apply to renovator and dust sampling technician courses in addition to lead-based paint activities courses. EPA received one comment offering general support for these proposed revisions. EPA is promulgating these revisions as proposed.

5. *State and Tribal program authorization.* Under the RRP rule, interested States, Territories, and Indian Tribes may apply for, and receive authorization to administer and enforce all of the elements of the RRP program. In May 2010, EPA proposed several changes to the State and Tribal program authorization regulations. The first was a clarification that State and Tribal programs do not need to include requirements for the accreditation of dust sampling

technicians if they require dust sampling to be performed only by a certified inspector or risk assessor. EPA received only one comment relating to this proposed revision, and that commenter thought that EPA should require States and Tribes to allow dust sampling technicians to collect samples. However, EPA does not have the authority to prohibit States and Tribes from having a more stringent program than the EPA's, *e.g.*, requiring more training for persons collecting dust wipe samples than EPA requires. It would not make sense for EPA to require States and Tribes to establish the dust sampling technician discipline if those trainees would not be allowed to perform any duties under State or Tribal law. Therefore, EPA is promulgating this change to the text of the regulation as proposed.

Along these same lines, EPA proposed to add a provision requiring State or Tribal programs to have procedures and requirements for on-the-job training of renovation workers who do not receive accredited training. EPA neglected to include such a provision in the 2008 RRP Rule. As with the dust sampling technician discipline, State and Tribal programs are only required to have these provisions if they permit on-the-job training for renovation workers. If, for example, a State or Tribal program only allows certified renovators to perform renovation activities within a regulated renovation work area, then no provisions for on-the-job training would be required for that State or Tribal program. EPA received one comment generally supporting this change. EPA is promulgating this revision as proposed.

EPA also proposed to amend the State and Tribal program requirements to clarify that both individuals and firms must receive certification. Only one comment was received on this topic, pointing out that EPA's proposed regulatory text at 40 CFR 745.326(e)(1) did not accomplish that objective. EPA agrees with this commenter, and has revised the regulatory text throughout this section accordingly to ensure that EPA's requirements are clear. EPA requires

both renovators and renovation firms to be certified. A renovator becomes certified by successfully completing an accredited renovator training class. A renovation firm becomes certified by submitting an application to EPA, attesting that it and its employees will follow the work practice standards at 40 CFR 745.85 for conducting renovations, and paying a certification fee. EPA believes that, in order for a State or Tribal program to be at least as protective as EPA's program, the State or Tribal program must, at a minimum, require formal certification for renovation firms. States and Tribes may, but are not required to, formally certify renovators. The certified renovation firm is responsible not only for the behavior of its certified renovators but also for the other workers that have been trained by the certified renovators. Thus, the renovation firm is ultimately responsible for the proper performance of the renovation. Requiring formal certification for renovation firms facilitates compliance monitoring and enforcement for EPA as well as for State and Tribal programs. A program that only required formal certification for individual renovators and not firms would not be as protective.

In addition, as pointed out by several State commenters, EPA inadvertently included the wrong provisions in the proposed regulatory text for revising authorized State and Tribal programs to conform to revisions to the 2008 RRP rule. The existing provisions at 40 CFR 745.326(f) give authorized State and Tribal programs 2 years from the effective date of any EPA revisions to the 2008 RRP rule to demonstrate that the State or Tribal program meets the requirements of the revised 2008 RRP rule. This 2 year period is also afforded to States and Tribes that submit applications for authorization before the effective date of any EPA revisions. EPA did not intend to make any changes to this provision and States and Tribes still have 2 years to make changes to their programs necessitated by revisions to the Federal RRP program.

Finally, EPA proposed to require that, in order to be authorized for any of the lead-based

paint programs, State or Tribal programs demonstrate that: (1) The State or Tribe is able to sue to obtain penalties, (2) civil and criminal penalties of at least \$10,000 are assessable for each instance of violation, (3) if violations are continuous, the penalties are assessable up to the maximum amount for each day of violation, and (4) the burden of proof and degree of knowledge or intent of the respondent is no greater than it is for EPA under TSCA. EPA also requested comment on what criteria States or Tribes should consider in assessing penalties and whether the \$10,000 minimum penalty authority level should be periodically adjusted for inflation. As discussed in the preamble to the proposed rule, in choosing the proposed minimum penalty authority of \$10,000 per violation per day, EPA looked to other programs that States and Tribes may be authorized to administer. Some of these programs have minimum penalty authority requirements for State and Tribal programs and some do not. For example, under the Clean Air Act (CAA) implementing regulations at 40 CFR 70.11(a)(3) and the Resource Conservation and Recovery Act (RCRA) implementing regulations at 40 CFR 271.16(a)(3), State programs must have the authority to assess civil and criminal fines of at least \$10,000 per day per violation. Other programs have established lower minimum penalty authority requirements. The implementing regulations for the Safe Drinking Water Act (SDWA) require State programs to have the authority to impose a penalty of at least \$1,000 per day per violation on public water systems serving a population of more than 10,000 individuals. Some EPA programs have set no minimum penalty authority requirements for States and Tribes; these programs include the Asbestos Hazard Emergency Response Act program and the State pesticide applicator certification program under the Federal Insecticide, Fungicide, and Rodenticide Act.

EPA received a number of comments on this provision. Six State commenters opposed the proposed provisions. Several argued that their legislatures had already created the authority

to establish an RRP program, but the maximum penalty amount was less than \$10,000. Five States described their existing penalty authorities--one already has a minimum penalty authority of \$10,000, one has \$5,000, and the other three have \$1,000. These States did not believe that they would be able to increase the maximum penalty authority, because it was comparable to other programs administered by the State, or that it would take several years to get an increase through the legislature, during which time EPA would have to administer the program in their jurisdictions. At least two already-authorized State RRP programs pointed out that they had been authorized with maximum penalty authorities of less than \$10,000. One State noted that it could assess penalties of up to \$750 or \$1,000 under its EPA-authorized RRP program, the other's maximum RRP penalty authority ranged from \$1,00 to \$1000. One of these States also noted that it had been effectively enforcing the Lead-based Paint Activities Program and the Pre-Renovation Education Program for years now, and the State did not believe that an increase in its maximum penalty authority would improve the effectiveness of its programs in any way. Another State commented that it has penalty authority of \$10,000, but that limit is for each enforcement case, not per violation per day. Some of the State commenters also noted that most enforcement actions in an RRP program would be against very small companies or individuals, and penalties of less than \$10,000 per violation per day would still be very effective deterrents for such entities.

Two environmental advocacy groups supported EPA's proposed minimum penalty authority of \$10,000, arguing that substantial penalties are necessary to get the attention of the regulated community and meaningful enforcement is critical to the rule's success at protecting individuals from exposures to dangerous levels of lead.

EPA agrees with these commenters on the importance of an effective enforcement

program. Strong enforcement of the lead-based paint regulations by authorized State and Tribal programs is critical to ensuring the safety of the occupants of target housing and child occupied facilities undergoing lead abatement, renovation, repair or painting. However, EPA also agrees with those States that argued that most of the enforcement actions in authorized lead-based paint programs would be against very small entities. Although small entities also violate the CAA and RCRA, it is likely that the regulated community in the lead-based paint programs consists of smaller entities than the other programs for which EPA has established minimum penalty authorities. Therefore, EPA is establishing a minimum penalty authority for State and Tribal programs of \$5,000. Because it is especially important to deter multiple violations and continuing violations, this final rule retains the “per violation, per day” requirement.

In response to the related requests for comment, State commenters did not favor adding a mechanism for adjusting these minimum penalty authorities for inflation. One environmental advocacy group supported the idea, but thought that it should not be a barrier to State and Tribal program authorization. EPA agrees with these commenters and no mechanism for adjusting these minimums for inflation is included in this final rule.

Commenters suggested a number of factors that should be considered by States and Tribes when imposing penalties for violations of their authorized programs. Several favored enforcement history and risk, but not to the extent of treating first-time offenders too lightly. A handful of commenters argued that size of business, and ability to stay in business should not be considered, because small companies can cause as much harm as large companies. EPA believes that States and Tribes may legitimately consider any of the factors that EPA typically considers, such as nature, circumstances, and extent of the violation, the culpability of the violator, history of prior violations, ability to pay or continue in business, voluntary disclosure, and attitude of the

violator. However, EPA will not require States and Tribes to consider any of these factors.

Finally, EPA received no comments on the proposed addition of an explicit requirement that States and Tribes have the ability to sue violators to collect penalties and that the burden of proof for enforcement be no more rigorous than the EPA standard under TSCA. EPA believes that these two elements are important elements of an effective enforcement program. Therefore, EPA is promulgating these additional requirements as proposed.

6. *Vertical containment.* EPA's 2010 proposal included more specific language on vertical containment requirements for exterior projects. As proposed, the rule would specifically state that vertical containment is required for exterior renovation projects that are covered by the rule and that affect painted surfaces within 10 feet of the property line. In such cases, vertical containment is necessary to ensure that adjacent buildings or properties are not contaminated by leaded dust or debris generated by the renovation. EPA's Dust Study demonstrates that leaded dust and debris from exterior renovations can be found 10 feet away from activities disturbing leaded paint, even if no prohibited or restricted practices are used. For example, in an experiment involving the dry scraping of paint from a single story garage, significant dust-lead levels were detected on collection trays at distances from 9 to 11 feet from the scraping activity (Ref. 6, page 6-25). These levels ranged from 7,500 $\mu\text{g}/\text{ft}^2$ to more than 16,500 $\mu\text{g}/\text{ft}^2$. The RRP rule, at 40 CFR 745.85(a)(2), requires renovation firms to isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. The rule further states, at 40 CFR 745.85(a)(2)(ii)(D), that, in certain situations, the renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not migrate to adjacent properties. EPA knows of no work practice other than a system of vertical containment or equivalent extra precautions in containing the work area that would

universally and effectively prevent the migration of dust and debris from renovations performed within 10 feet of the property line to adjacent properties.

EPA also proposed to clarify, in the regulatory text itself, that windy conditions may also necessitate the use of vertical containment to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties. Specific mention of windy conditions was made in the preamble to the final 2008 RRP rule, although it was not included in the regulatory text. Nevertheless, EPA expects atmospheric conditions to be one of several factors that renovation firms consider when designing containment systems. Other factors would include the height of the building and the paint disturbance and the type of renovation activity planned. EPA thought that specifically including windy conditions as a factor to consider when designing an effective containment system would serve as an important reminder for renovation firms. Including the mention of windy conditions in the proposed regulatory text did not mean that vertical containment would be required for any particular renovations. The 2010 proposal also included a definition of the term “containment” in order to clarify what is meant by the term. The proposed definition was based on the definition of “Worksite preparation level” from the Department of Housing and Urban Development’s “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” (HUD Guidelines, Ref. 11). The proposed definition included additional information on what constitutes vertical containment.

Some commenters supported the proposed revisions to the vertical containment requirements. One thought that contamination of neighboring properties is a common and serious problem. Other commenters did not support the proposed revisions. These commenters thought that the proposed revisions were too inflexible and unnecessary. EPA disagrees with these commenters. As discussed, the Dust Study shows that dust and debris from exterior

renovations travels at least 10 feet from the activity. The RRP rule requires the ground to be covered with plastic sheeting or other impermeable material extending 10 feet beyond the surfaces being renovated or a sufficient distance to collect falling paint debris, whichever is greater, unless prevented by the property line. In the absence of a system of vertical containment or equivalent extra precautions in containing the work area, EPA knows of no work practice that would universally and effectively ensure that adjacent properties are not contaminated when work disturbs lead-based paint within 10 feet of the property line. One commenter thought that it should be sufficient to require the renovation firm to inform the neighbors to keep their windows and doors closed while the renovation is ongoing. While this might prevent leaded dust from drifting into the interiors of adjacent buildings, it does not address contamination of the neighboring porches, balconies, or yards. This does not meet the standard already present in the RRP rule, that dust and debris not be permitted to leave the work area while the renovation is ongoing. EPA is also concerned about the ability of renovation firms to affect the behavior of neighbors whose homes are not being renovated.

Several commenters expressed concern about the safety of workers and vertical containment. One argued that OSHA has said that vertical containment is not required in situations where worker safety would be compromised, such as in windy conditions. EPA agrees that erecting extensive scaffolding to support a large vertical containment system in some windy conditions may be unsafe for workers. If such a vertical containment system would be necessary to ensure containment of the dust generated by a particular renovation, EPA knows of no alternative but to reschedule the renovation for a more clement day. The HUD Guidelines state that exterior renovation work should not be conducted when the wind speed is greater than 20 miles per hour (Ref. 11). The Guidelines also state that work must cease and cleanup be

completed before rain begins. EPA has not imposed these specific requirements, but renovation firms should consider this guidance when deciding how to proceed.

Other commenters were concerned about the additional costs that the revisions to the vertical containment provisions would impose on renovations and the potential negative impact on affordable housing and weatherization programs. EPA agrees that it is more expensive to conduct exterior renovations with vertical containment than without. In EPA's economic analysis for the 2008 RRP rule, EPA addressed those situations where the renovation firm must take extra precautions to effectively contain dust and debris, including work areas in close proximity to other buildings, work areas that abut a property line, and windy conditions. The 2008 economic analysis specifically notes that it is sometimes necessary to erect a system of vertical containment to prevent paint dust and debris from contaminating the ground or any object beyond the work area. To account for these situations, EPA estimated that approximately 2% of exterior jobs would use exterior containment, and the incremental cost of vertical containment varies from \$330 per wall to \$1,640 per wall, depending on the size of the job. Thus, EPA has already accounted for the additional costs incurred for using vertical containment systems on renovations performed within 10 feet of the property line.

Because EPA does not know of any effective alternatives to the vertical containment requirement for exterior renovations performed within 10 feet of the property line, EPA is promulgating a requirement that vertical containment or equivalent extra precautions in containing the work area be used on exterior renovations performed within 10 feet of the property line. This requirement is intended to provide flexibility for certified renovators to design effective containment systems based on the renovation activity and the work site. To ensure that renovation firms understand that the requirement refers to a wide variety of effective

work area containment systems, EPA is including the phrase “or equivalent extra precautions in containing the work area” in this requirement. Effective work area containment can span a range from simple barriers to more extensive scaffolding, depending on the size of the job and other relevant factors. Complex vertical containment systems with extensive scaffolding are often not necessary to effectively contain the dust generated by a renovation. An example of a simple barrier system, on a job requiring hand scraping within a few feet of the ground and within a few feet of the property line, would be laying plastic or other impermeable material on the ground between the paint-disturbing activity and the property line, anchoring it to the house, and then extending the material up and over the fence at the property line. A slightly more extensive containment approach could involve the use of a triangular eave/soffit “lean-to” system. In this system, plastic or other impermeable material could be spread out on the ground 5-10 feet out from the exterior side wall, depending upon the available space. The same impermeable material could be attached to the eave or soffit area at the roofline, and held away from the building by an extension ladder temporarily fastened to where the wall meets the eave or soffit. The material would then be fastened and sealed onto the ground cover. A variation of this system would involve draping the plastic or impermeable material over a frame consisting of commercially-available tension rods or strong painter’s extension tubes. Effective containment could also consist of plastic or other impermeable material draped from outriggers, or framework secured to the roofline, taped to the sides of the building to surround the work area, and fastened and sealed to the ground cover. Yet another containment system could involve a rigid box-like framework, constructed out of commercially-available tension rods or painter’s extension tubes, wrapped in impermeable sheeting and anchored to the ground cover and the sides of the building. EPA believes that these measures, in most cases, should be sufficient to contain dust and debris where

extra containment measures are needed, such as work that creates large amounts of dust or work performed within 10 feet of the property line.

EPA realizes that it may be costly or impracticable to deploy an elaborate vertical containment system, for example, in high rise multi-story buildings. The Agency, furthermore does not wish to create hazardous situations for workers that would outweigh the benefit of capturing the dust with scaffolding-based vertical containment systems. EPA believes that equally effective systems may exist. Thus, EPA added language indicating that “equivalent extra precautions in containing the work area” will also satisfy the requirement to contain dust on the worksite of exterior renovations performed within 10 feet of the property line.

EPA continues to believe that it is important to remind renovation firms that there may be other situations where vertical containment or equivalent extra precautions in containing the work area would be required in order to prevent dust and debris from leaving the work area. However, because some commenters appeared to believe that EPA’s mention of windy conditions amounted to a requirement to use vertical containment in windy conditions, EPA is deleting the phrase “such as in windy conditions.” The complete provision, as promulgated, reads: “If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.” EPA wishes to encourage innovation in designing effective containment systems or measures, so EPA will consider any information or data made available to it that could be used to determine the

equivalence of extra containment precautions in containing the work area. For example, the Department of Energy (DOE) suggested that an equivalent containment system could involve the use of a trough-like system beneath the paint-disturbing work. The trough would consist of polyethylene and tubing fabricated in a U-shape configuration, extending 1 to 2 feet from the exterior side of the building. According to DOE, the bottom of the trough could be weighted down with scrap lumber and sprayed with water enabling it to capture the falling dust and debris. DOE suggested that this trough, especially if combined with dust minimization techniques such as wet methods, the use of dust-capturing shrouds, and HEPA vacuums, would be equally effective at containing dust and debris as vertical containment. EPA cannot determine that the trough, by itself, provides effective containment of dust and debris, but will be examining this in the future. Similarly, DOE suggested that another possible method for the dust that is generated during an exterior renovation to be captured could involve the use of a shroud attached to a power tool with a HEPA vacuum, also attached to the shroud, where the dust and debris is captured right at the source--thereby not allowing it to fall onto polyethylene, workers clothing, equipment, and tools. EPA seeks data or other information upon which to evaluate that the following are effective at containing dust and debris: the trough in combination with dust minimization techniques; the use of a shroud attached to a power tool with a HEPA vacuum; or other alternative methods. EPA will review and issue guidance as appropriate. EPA intends to work collaboratively with DOE and HUD and other agencies and stakeholders as appropriate to develop further guidance on equivalent extra precautions in containing the work area.

In addition, since promulgation of the 2008 RRP rule, EPA has received several inquiries from the regulated community on the rule's containment provisions. In particular, EPA has been asked to address the problem of obstacles that prevent renovation firms from using 6 feet of

plastic sheeting or other impermeable material on interior floors or 10 feet of material on the ground. EPA believes that the proper use of vertical containment measures may be a more effective method for containing the work area than use of traditional floor or ground containment alone, especially where obstacles prevent or make it impractical to install floor or ground containment to the extent required by the RRP rule. Therefore, EPA is amending the containment provisions for both interior and exterior renovations to permit renovation firms to erect vertical containment closer to the renovation activity than the minimum floor or ground containment distance specified in the RRP rule to give renovation firms more flexibility in designing effective containment strategies for particular work sites. For exterior renovations, this amendment would allow a renovation firm to construct vertical containment less than 10 feet from the renovation activity. If a renovation firm chooses to take advantage of this provision, the ground containment may extend less than 10 feet, stopping just outside the edge of the vertical containment, as long as the distance is sufficient to contain all dust and debris during the renovation and post-renovation cleanup. For example, a renovation firm erects an exterior vertical containment system consisting of a rigid box-like framework wrapped in impermeable plastic sheeting and anchored to the ground and home. If this containment system is erected 5 feet from the side of the home, and placed on top of ground containment, such containment should effectively limit the travel of dust and debris to the interior of the enclosure. Under the amended containment provisions, the renovation firm would not be required to extend plastic sheeting or other impermeable material another 5 feet beyond the vertical containment system in order to meet the 10 foot minimum ground containment requirement promulgated in the 2008 RRP rule.

EPA is also providing increased flexibility for renovation firms by allowing firms the

option to use vertical containment measures in combination with reduced floor containment on interior renovations. However, to qualify for reduced floor containment requirements, vertical containment systems for interior renovations must consist of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls (*e.g.* through the use of tape, foam or other means which create tight seals), thus effectively creating a separate enclosure. This type of vertical containment acts as the functional equivalent of a wall for purposes of defining the work area and, if the vertical containment meets these criteria, the floor containment measures may stop at the edge of the vertical barrier. However, unlike permanent walls, vertical containment barriers are subject to all containment cleaning requirements including misting, inward folding, sealing, and proper disposal following the renovation. A firm must also thoroughly clean an additional two feet beyond the vertically-contained work area. Finally, during ingress or egress from the vertical enclosure, a firm must take precaution to ensure that dust and debris on personnel, tools, and other items do not escape the work area.

Upon further consideration of the proposed definition of containment, particularly in light of the comments received on the proposed vertical containment requirements, EPA has determined that a broader definition of containment is unnecessary, and may even be confusing, but a definition of vertical containment would help to clarify the vertical containment requirements. In addition, EPA believes that there may be confusion among the regulated community and other stakeholders about what EPA means when it uses the term “vertical containment.” As previously discussed, vertical containment can span the range from simple barriers to box-like structures to more extensive scaffolding. Accordingly, EPA is promulgating a definition of “vertical containment” that is similar to the last sentence of the proposed

definition of “containment.” Vertical containment is defined as a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. The definition further states that vertical containment is required for some exterior renovations but it may be used on any renovation. EPA encourages members of the regulated community, or other stakeholders, who have questions on the work area containment requirements or any other aspect of the RRP rule to consult the Frequent Question database accessible from EPA’s primary lead web page at www.epa.gov/lead or contact the National Lead Information Center by calling 1(800) 424-LEAD [5323]. Hearing- or speech-impaired persons may reach the National Lead Information Center through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

7. Prohibited or restricted practices. In May 2010, EPA proposed to make a number of minor revisions to clarify the prohibitions and restrictions on work practices in 40 CFR 745.85(a)(3). The first was a clarification that these prohibitions and restrictions, *e.g.*, the prohibition on open flame burning or torching, apply to all painted surfaces, not just surfaces where the presence of lead-based paint has been confirmed. The term “lead-based paint” was incorrectly and inadvertently used in this subparagraph, making it inconsistent with the rest of the RRP rule, which applies in the presence of known lead-based paint as well as paint that has not been tested for lead content. Accordingly, EPA proposed to replace the term “lead-based paint” with “painted surfaces” in this subparagraph. Of course, if the painted surface has been tested and found to be free of lead-based paint, the prohibitions and restrictions on work practices in the final RRP rule do not apply. Commenters generally supported this revision, although two commenters noted that EPA uses the term “painted surfaces” throughout the RRP rule and it is unclear whether this refers just to paint or to other surface coatings as well. These

commenters noted that the definition of “lead-based paint” includes paint and other surface coatings but there is no definition of the term “painted surfaces.” These commenters observed that other surface coatings, such as varnish, can contain significant amounts of lead. The commenters suggested that EPA address this issue throughout the RRP rule. EPA agrees with these commenters. In using the term “painted surfaces,” EPA has always meant component surfaces that are covered in whole or in part with a coating that could be lead-based paint. The term was designed to encompass situations where the surface is covered with lead-based paint as defined by the regulation as well as situations where the lead content of the surface coating had not been determined. EPA never intended to exclude varnishes or other surface coatings from the coverage of the RRP rule. In fact, the applicability section of the RRP rule, 40 CFR 745.82, limits the exclusions for testing to those situations where the components to be disturbed by a renovation have been demonstrated to be free of paint and other surface coatings that contain lead at levels equal to or exceeding the regulatory threshold. Therefore, EPA is promulgating this revision as proposed and EPA is also adding a clarifying definition of “painted surface” to 40 CFR 745.83. This definition states that painted surface means a component surface covered in whole or in part with paint or other surface coatings.

In addition, EPA proposed to clarify that the restriction in this section on the use of machines that remove paint through high speed operation applies anywhere painted surfaces are being disturbed by such machines; the restriction is not limited to situations where all of the paint is removed by such machines. EPA received no comments specifically on this proposed revision, although the comments on the general issue of paint including other surface coatings are also applicable here. EPA is promulgating this revision as proposed, with the addition of the phrase “or other surface coatings” after the term “paint,” because EPA never intended to create a

loophole that would allow someone to remove some or most of the paint or other surface coating from a component without complying with the restriction.

Finally, EPA proposed to clarify what was meant by HEPA exhaust control. In order to better express what is required when machines designed to remove paint through high speed operation are used, EPA consulted the Occupational Safety and Health Administration's Technical Manual (Ref. 13). The use of shrouded tools to remove lead-based paint is discussed in Chapter 3 of Section V, entitled "Controlling Lead Exposures in the Construction Industry: Engineering and Work Practice Controls." Using language from this reference, EPA proposed to amend 40 CFR 745.85(a)(3)(ii) to read, "The use of machines designed to remove paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines are used shrouded and equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation." EPA received several comments on this topic. The commenters generally supported the change, but two thought that there should be a performance standard included in the provision, a visible standard that warns the workers that the shroud or containment system is not working properly. EPA agrees with these commenters. Another commenter thought that the term "shrouded" in the proposed revision would make the RRP rule more stringent than the requirements applicable to abatement contractors. After consulting the abatement chapter of the HUD Guidelines, EPA has determined that the proposed language could potentially be read to exclude one of the two types of sanders described by HUD as appropriate for abatement work because they provide HEPA exhaust control. Accordingly, EPA is promulgating the revision as proposed, except that the regulatory language will read "... unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of

generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system.”

8. *HEPA vacuums*. In May 2010, EPA proposed to clarify that vacuums qualifying as HEPA vacuums for the purposes of this rule must be operated and maintained in accordance with the manufacturer’s instructions in order to continue to qualify as HEPA vacuums. This includes following the manufacturer’s filter change interval recommendations. EPA also proposed to clarify that the standard for HEPA filters, that they be capable of capturing particles of 0.3 microns with 99.97% efficiency, means that the filters must have a Minimum Efficiency Reporting Value (MERV) of 17 or greater. At the time, EPA also recommended that renovation firms have information from the manufacturer that the particular model of vacuum that the renovation firm intends to use, or the vacuum’s HEPA filter, has been tested in accordance with an applicable test method, such as ASTM F1471-09, “Standard Test Method for Air Cleaning Performance of a High-Efficiency Particulate Air-Filter System,” and has been determined to meet this standard (Ref. 13).

EPA received a number of comments on these proposed revisions. Commenters specifically addressing the requirement that vacuums be operated in accordance with the manufacturer’s instructions, including filter change interval recommendations, were in general agreement with the requirement. Other commenters expressed a general concern that these revisions would prohibit the use of consumer-grade HEPA vacuums that renovation firms had recently purchased to comply with the RRP rule. Some argued that the proposed language regarding the MERV was too stringent, given industry practice for high-efficiency vacuums. One commenter cited research they had done on the efficiency of HEPA vacuums to argue that the HEPA vacuums used in EPA’s Dust Study would not have met the MERV standard proposed

by EPA. However, the commenter did not provide sufficient information to support this assertion. Several commenters echoed comments EPA received during the rulemaking process for the 2008 RRP rule, arguing that HEPA vacuums are too expensive and are not necessary. Other commenters believed that additional requirements should be added, such as a requirement to field test the efficiency of the vacuums on a regular basis or after filter changes.

EPA continues to believe that HEPA vacuums are a necessary part of the required RRP work practices. In addition, the OSHA Lead in Construction standard requires the use of HEPA vacuums whenever vacuums are used. However, EPA also understands the concerns of those commenters who had already purchased HEPA vacuums for purposes of the RRP rule as well as those others who thought that the proposed MERV value of 17 would be too stringent. In balancing these concerns, EPA has decided to promulgate the requirement that HEPA vacuums be operated in accordance with manufacturer's instructions, but not the requirement that compliant vacuums be rated at a MERV value of 17 or higher.

In addition, in response to EPA's recommendation that renovation firms obtain information from the manufacturer that the efficiency of their particular model of HEPA vacuum or HEPA filter has been tested in accordance with an applicable test method, some commenters noted that this information may not be readily available to renovation firms. These commenters suggested that EPA maintain a list of HEPA vacuums that have been tested and found to meet the HEPA vacuum requirements.

9. *On-the-job training.* EPA's 2010 proposal included a clarification regarding the required elements of on-the-job training provided by renovators. Specifically, EPA proposed to clarify that the RRP rule requires certified renovators to train other renovation workers in only the work practices required by the RRP rule that the workers will be using in performing their

assigned tasks. As discussed in the 2010 proposal, EPA did not intend to require training in any other subjects, such as how to paint or how to connect pipes. EPA is promulgating the clarification as proposed and amending 40 CFR 745.90(b)(2) and (b)(4) to refer specifically to the work practice requirements in 40 CFR 745.85(a). Two comments were received on this proposed clarification, both commenters expressed support for the change.

10. *Grandfathering*. Under the final 2008 RRP rule, individuals who successfully completed an accredited abatement worker or supervisor course, and individuals who successfully completed the HUD, EPA, or the joint EPA/HUD model renovation training courses may take an accredited refresher renovation training course in lieu of the initial renovation training to become a certified renovator. In addition, individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course, but are not currently certified in the discipline, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. As discussed in the 2010 proposal, EPA inadvertently failed to include in the 2008 RRP rule a time limit for taking the refresher in lieu of the initial course. Many of the commenters who addressed the issue of grandfathering in the 2008 RRP rulemaking contended that there should be restrictions based on how much time elapsed since the training was taken. In addition, under the lead-based paint activities regulations at 40 CFR 745.226, EPA allowed a similar grandfathering provision but only for a limited time. Accordingly, EPA proposed to set a limit on when an individual can take advantage of the grandfathering provision under the RRP rule. The preamble to the 2010 proposal stated that the limit would be July 31, 2011, such that renovators and dust sampling technicians who take the appropriate prerequisite course before that date would be permitted to take an accredited refresher training course in lieu of the initial training. EPA received three

comments on this provision. One commenter helpfully pointed out that, while the preamble said that the limit would be July 31, 2011, the proposed regulatory text said that it would be April 22, 2011. The three commenters supported the limit of July 31, 2011, one noting that EPA should not continue to encourage renovators to take lead-safe work practices courses that do not meet the requirements for certified renovator training. EPA generally agrees with these commenters and is promulgating a provision that allows renovators and dust sampling technicians who take the appropriate prerequisite course before the effective date of this rule to take an accredited refresher training course in lieu of the initial training.

EPA also proposed a clarification regarding the grandfathering provision as it applies to the dust sampling technician discipline. Individuals who successfully complete an accredited lead-based paint inspector or risk assessor course, but are not currently certified in the discipline, may take an accredited refresher dust sampling technician course in lieu of the initial training before the effective date of this rule to become a certified dust sampling technician. Inspectors and risk assessors who are certified by EPA or an authorized state program are qualified to perform dust sampling as part of lead hazard screens, risk assessments, or abatements as well as for other purposes, such as post-renovation dust sampling. Therefore, it would be unnecessary for a certified inspector or risk assessor to seek certification as a dust sampling technician. The 2008 RRP rule explains who is eligible to take the refresher dust sampling technician course in lieu of the initial training. However, the regulations as promulgated did not explicitly say that a certified inspector or risk assessor may perform dust sampling. In order to clarify the intent of the regulation, EPA proposed to amend 40 CFR 745.90(a)(3) to specifically state that a certified inspector or risk assessor may act as a dust sampling technician. EPA is promulgating this provision as proposed. One comment was received on this topic expressing general support for

the amendment.

III. References

As indicated under **ADDRESSES**, a docket has been established for this rulemaking under docket ID number EPA-HQ-OPPT-2005-0049. The following is a listing of the documents that are specifically referenced in this final rule. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. Environmental Protection Agency (EPA). Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (75 FR 25038, May 6, 2010) (FRL-8823-5).
2. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL-8355-7).
3. EPA. Lead; Requirements for Lead-based Paint Activities; Final Rule. **Federal Register** (61 FR 45778), August 29, 1996) (FRL-5389-9).
4. EPA. Lead; Identification of Dangerous Levels of Lead; Final Rule. **Federal Register** (66 FR 1206, January 5, 2001) (FRL-6763-5).
5. EPA. Electrostatic Cloth and Wet Cloth Field Study in Residential Housing (September 2005).
6. EPA. Characterization of Dust Lead Levels After Renovation, Repair, And Painting Activities. (November 13, 2007).

7. EPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase I, Environmental Field Sampling Study (EPA 747-R-96-007, May 1997).
8. EPA. Reviewed Studies Pertaining to HEPA Shroud Effectiveness. (2009).
9. EPA. Office of Pollution Prevention and Toxics (OPPT). “Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities” (March 2008).
10. U.S. Department of Housing and Urban Development (HUD). Evaluation of the HUD Lead-Based Paint Hazard Control Grant Program: Final Report. May 1, 2004.
11. HUD. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995).
12. U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). Technical Manual TED 01-00-015 [TED 1-0.15A]. Revised June 24, 2008.
13. ASTM International. Standard Test Method for Air Cleaning Performance of a High-Efficiency Particulate Air-Filter System (F1471-09).
14. EPA. OPPT. “Discussion of Potential Costs and Benefits Associated with the Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program Final Rule” (July 2011).
15. EPA. OPPT. “Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Opt-out and Recordkeeping Final Rule for Target Housing and Child-Occupied Facilities” (April 2010).
16. EPA. Final Clearance Rule ICR Addendum for the rulemaking entitled Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program; Final Rule. (July 2011).

17. EPA. Report of the Small Business Advocacy Review Panel on the Lead-based Paint Certification and Training; Renovation and Remodeling Requirements. (March 3, 2000).

18. EPA. Lead; Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (71 FR 1588, January 10, 2006) (FRL-7755-5).

IV. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563, entitled *Improving Regulation and Regulatory Review* (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared a document discussing the potential costs and benefits associated with this final rule. This document, entitled "Discussion of Potential Costs and Benefits Associated with the Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program Final Rule" (Ref. 14), is available in the docket for this action and is briefly summarized here.

For the most part, the amendments to the RRP rule contained in this final rule impose only minimal incremental costs. For example, the requirement for training course providers to submit copies of personnel qualifications along with their applications will result in providers making copies of and submitting with their application 2-4 additional pieces of paper that they are already required to have in their possession before submitting the application. The requirement to submit copies of State training course materials, if used, could add significantly to

the size of the training provider's application. However, EPA believes that it will be a rare occurrence for training providers to use State-approved training course materials, when EPA model training course materials are readily available. Likewise, the provision allowing certified renovators to collect paint chip samples in lieu of using test kits adds no additional costs, because certified renovators are not required to take this step in addition to existing activities – it is an added option from which they may choose. Similarly, the minimum enforcement provisions and other requirements for State and Tribal programs imposes no costs because States and Tribes are not required to have authorized programs, nor are they required to revise their programs to incorporate EPA revisions. While EPA is requiring specific recordkeeping for training providers who wish to provide e-learning courses, e-learning courses are not required from any training provider. In addition, EPA believes that the recordkeeping requirements for e-learning courses are comparable to, and no more burdensome than, the ordinary recordkeeping already required for courses provided in traditional formats.

Many of the amendments are merely clarifications of existing regulatory language and implementation of policy and impose no additional costs. Examples of these amendments include the clarifications on the role of the principal instructor in an accredited training program, the requirement that the trainee photograph on a course completion certificate be an accurate representation of the trainee and no smaller than one square inch, and the clarification that certified renovators are only required to provide on-the-job training in the RRP work practices to other renovation workers.

With respect to the vertical containment requirements of this final rule, EPA has already accounted for the costs of those requirements. In EPA's economic analysis for the 2008 RRP rule, EPA addressed those situations where the renovation firm must take extra precautions to

effectively contain dust and debris, including work areas in close proximity to other buildings, work areas that abut a property line, and windy conditions. The 2008 economic analysis specifically notes that it is sometimes necessary to erect a system of vertical containment to prevent paint dust and debris from contaminating the ground or any object beyond the work area. To account for these situations, EPA estimated that approximately 2% of exterior jobs would use exterior containment, and the incremental cost of vertical containment varies from \$330 per wall to \$1,640 per wall, depending on the size of the job. Thus, EPA has already accounted for the additional costs incurred for using vertical containment systems on renovations performed within 10 feet of the property line.

Some of the amendments are likely to result in some additional costs for the regulated community, but EPA is unable to estimate what those costs might be. For example, removal of the provision allowing renovation firms to skip the cleaning verification step when performing clean-up if the firm is also required to achieve clearance could result in some minimal additional cost for those renovations. As previously discussed, EPA's "Electrostatic Cloth and Wet Cloth Field Study in Residential Housing" (Ref. 5) showed that cleaning verification should take approximately 5 minutes per cloth for each pass, and each cloth may be used for up to 40 square feet of uncarpeted floor, countertop, or windowsill space. EPA estimated, as part of the final 2008 RRP rule analyses, that the material cost for each disposable cloth is \$0.46 and that handles are \$13.60 apiece (Ref. 9). EPA assumed that these handles can be used for approximately 1,000 events. On the other hand, the Dust Study demonstrates that the wet disposable cleaning cloth method is very effective at cleaning up dust. It is likely that completing the entire RRP cleaning protocol, including cleaning verification, will increase the probability that clearance, where required by HUD or another entity, will be achieved on the first attempt, thus eliminating the

burden of additional clearance attempts.

This final rule extends the recordkeeping requirement for providers of certified renovator and certified dust sampling technician training from 3 years and 6 months to 5 years in general and slightly more than 5 years for training providers who offered accredited courses in these disciplines before April 22, 2010. The recordkeeping extension does not affect recordkeeping requirements associated with obtaining and maintaining accreditation. This extension only affects those records pertaining to training courses, specifically notifications. Pro-rating the recordkeeping cost estimates from EPA's economic analysis for the Opt-Out and Recordkeeping Final Rule, also published in the **Federal Register** on May 6, 2010 (Ref. 15), shows that the recordkeeping burden for courses provided during the first year the rule was effective increases from \$43.68 to \$61.88 per training provider. For courses provided in subsequent years, the recordkeeping burden per training provider increases from \$4.80 to \$6.80. These estimates are for the entire 5 years that the records would have to be kept.

For the 2008 RRP rule, EPA estimated that there would be approximately 1.4 million children under the age of 6 and 5.4 million adults who would be affected by having their exposure to lead dust minimized due to the rule. The analysis for the 2010 final Opt-Out rule estimated that an additional 5.2 million older children and adults would be affected by reduced lead exposure due to the rule.

B. Paperwork Burdens

The information collection requirements contained in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* EPA has prepared an Information Collection Request (ICR) document to amend an existing ICR that is approved under OMB Control No. 2070-0155 (EPA ICR No. 1715). The ICR amendment, entitled "ICR Addendum for Final Rule entitled "Lead;

Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program; Final Rule (RIN 2070–AJ57)” and identified under EPA ICR No. 2381.02, has been placed in the docket for this rule (Ref. 16).

This regulatory action contains only two amendments to the approved existing information collection: Amendments to the requirement for the training provider to submit documentation of training manager and principal instructor qualifications; and a requirement for providers of renovator and dust sampling technician training to maintain training records for these courses for 5 years, rather than 3 years and 6 months. These requirements add only negligible paperwork burden hours to the existing burden estimate.

EPA previously estimated for the final 2008 RRP rule (Ref. 9) and the final Opt-out rule (Ref. 15) that 170 training providers would be accredited to provide renovator training. These training providers will now have to submit an additional 2-4 photocopies along with their applications for accreditation. EPA estimates that each photocopy costs \$0.09 to generate, for a maximum of \$0.36 additional cost for training providers with one training manager and one principal instructor. Each of these 170 training providers is also required to provide training course notifications under the existing RRP rule. These notifications will now have to be kept for 5 years instead of 3 years and 6 months. EPA has also estimated that each of these training providers would offer on average a total of 86 renovator or dust sampling technician courses in the first year, and 20 per year thereafter. This would require a total of 182 single-page notifications in the first year, and 42 each year thereafter.

Under PRA, burden is defined at 5 CFR 1320.3(b) and means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. An agency may not conduct or sponsor, and a person is

not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations codified in 40 CFR chapter I, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, as applicable.

C. Small Entity Impacts

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, small entity is defined in accordance with RFA section 601 as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.
2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.
3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The small entities directly regulated by this final rule are providers of lead-based paint related training, renovation firms, individuals who perform renovations, and any small governmental jurisdictions or not-for-profit enterprises that provide lead-based paint training or renovation services. As discussed previously, EPA has decided not to promulgate the clearance and clearance testing requirements, and is instead promulgating minor amendments to the requirements for lead-based paint training providers and renovation firms that will have only

negligible adverse impacts on any small entities.

In addition, RFA states that agencies “may consider a series of closely related rules as one rule for the purposes of [an IRFA]” in order to avoid “duplicative action.” 5 U.S.C. 605(c). This rulemaking is closely related to the 2008 RRP rule. Indeed, the proposed rule addressed one of the major issues in the 2008 rulemaking and some of the provisions finalized in the 2008 RRP rule. Accordingly, EPA was not required to complete a regulatory flexibility analysis for this rulemaking. Nonetheless, EPA exercised its discretion to complete an Initial Regulatory Flexibility Analysis (IRFA) for the 2010 proposal (see 75 FR 25038). The IRFA considered the potential adverse economic impacts of the 2010 proposed rule on affected small entities, primarily those related to the proposed clearance and clearance testing requirements. The proposed provisions analyzed for purposes of the IRFA are not part of this final rule.

Moreover, as discussed in the 2010 proposed rule in more detail, the Small Business Advocacy Review (SBAR) Panel that was conducted in connection with the 2006 RRP proposal is equally applicable to this closely related amendment to the 2008 RRP rule. The SBAR Panel discussed all major aspects of the 2006 proposal to regulate renovation and remodeling activities, including issues related to ensuring that proper cleanup occurs after renovation activities. As a part of the panel process, EPA “collect[ed] advice and recommendations” from several Small Entity Representatives (SERs) on the 2006 proposal to regulate renovation and remodeling activities. 5 U.S.C. 609(b). The SBAR Panel report, entitled *Report of the Small Business Advocacy Review Panel on The Lead-based Painting; Certification and Training; Renovation and Remodeling Requirements* (March 3, 2000), expressly addressed containment and dust clearance testing requirements (Ref. 17). Thus, the primary issues considered in this rulemaking are wholly within the scope of the issues EPA considered as part of the 2008 RRP rule and were

within the scope of the issues considered by the SBAR Panel. Reconvening the RRP Panel for the 2010 proposed rule would be procedurally duplicative and unnecessary.

D. Unfunded Mandates

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule includes only minor amendments to the requirements for providers of lead-based paint training and for renovation firms. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531-1538).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are only regulated by this action to the extent that they engage in providing lead-based paint training or renovation services.

E. Federalism

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this final rule does not have “federalism implications,” because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this final rule. Nevertheless, in the spirit of the objectives of this Executive Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA consulted with representatives of State and local governments during the rulemaking process for the 2008 RRP rule. These consultations are as described in the

preamble to the 2006 RRP proposed rule (Ref. 18).

F. Indian Tribal Government Implications

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 9, 2000), EPA has determined that this final rule does not have tribal implications because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in the Executive Order. Thus, Executive Order 13175 does not apply to this final rule. Although Executive Order 13175 does not apply to this final rule, EPA consulted with Tribal officials and others by discussing potential renovation regulatory options at several national lead program meetings hosted by EPA and other interested Federal agencies.

G. Protection of Children

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this final rule because it is not an "economically significant regulatory action" as defined by Executive Order 12866. While the environmental health or safety risk addressed by the 2008 RRP rule does have a disproportionate effect on children, this final rule makes only minor changes in the administrative requirements for accredited training providers and includes minor amendments to the requirements for renovation firms.

EPA has evaluated the environmental health or safety effects of renovation, repair, and painting projects on children. Various aspects of this evaluation are discussed in the preamble to the 2006 proposed RRP rule (Ref. 18). The primary purpose of the final 2008 RRP rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting

activities in housing where children under age 6 reside and in housing or other buildings frequented by children under age 6. In the absence of the final 2008 RRP rule, adequate work practices are not likely to be employed during renovation, repair, and painting activities. EPA's analysis indicates that there will be approximately 1.4 million children under age 6 affected by the RRP rule. These children are projected to receive considerable benefits due to the RRP rule. In addition, older children will also benefit from the protections afforded by the RRP rule.

H. Effect on Energy Supply, Distribution, or Use

This final rule is not a "significant energy action" as defined in Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. Technical Standards

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note. Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

J. Environmental Justice

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in*

Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

While EPA has not assessed the potential impact of this final rule on minority and low-income populations, EPA did assess the potential impact of the final 2008 RRP rule as a whole. As a result of the final 2008 RRP rule assessment, contained in the economic analysis for the final 2008 RRP rule, EPA has determined that the RRP rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population (Ref. 9).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental protection, Child-occupied facility, Housing renovation,
Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: July 15, 2011


Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 745--[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

2. In § 745.82, add a new paragraph (a)(3) to read as follows.

§ 745.82 Applicability.

(a) * * *

(3) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

* * * * *

3. In § 745.83, add the definition “Painted surface” and the definition “Vertical containment” in alphabetical order to read as follows:

§ 745.83 Definitions.

* * * * *

Painted surface means a component surface covered in whole or in part with paint or other surface coatings.

* * * * *

Vertical containment means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for some exterior renovations but it may be used on any renovation.

* * * * *

4. Section 745.85 is amended as follows:

- a. Revise paragraphs (a)(2)(i)(D) and (a)(2)(ii)(C) and (D);
- b. Revise paragraph (a)(3);

The revisions read as follows:

§ 745.85 Work practice standards.

(a) * * *

(2) * * *

(i) * * *

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls.

* * * * *

(ii) * * *

(C) Cover the ground with plastic sheeting or other disposable impermeable material

extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system.

(D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(3) *Prohibited and restricted practices.* The work practices listed below are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited.

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation.

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.

* * * * *

5. Section 745.86, is amended as follows:

a. Add paragraph (b)(1)(iii).

- b. Redesignate paragraphs (b)(6)(iv) – (vii) as paragraphs (b)(6)(v) – (viii), respectively.
- c. Add new paragraph (b)(6)(iv).

The additions and revisions read as follows:

§ 745.86 Recordkeeping and Reporting Requirements.

* * * * *

(b) * * *

(1) * * *

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

* * * * *

(6) * * *

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

* * * * *

6. Section 745.90 is amended as follows:

- a. Revise paragraphs (a)(2) and (a)(3).
- b. Revise paragraphs (b)(2), (b)(4), and (b)(8).

§ 745.90 Renovator certification and dust sampling technician certification.

(a) * * *

(2) Individuals who have successfully completed an accredited abatement worker or

supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/HUD model renovation training course before *[insert date [60] days after date of publication in the Federal Register]* may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course *[insert date [60] days after date of publication in the Federal Register]* may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

* * * * *

(b) * * *

(2) Must provide training to workers on the work practices required by § 745.85(a) that they will be using in performing their assigned tasks.

* * * * *

(4) Must regularly direct work being performed by other individuals to ensure that the work practices required by § 745.85(a) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

* * * * *

(8) Must prepare the records required by § 745.86(b)(1)(ii) and (6).

* * * * *

7. In § 745.92, add paragraph (b)(3) to read as follows:

§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.

* * * * *

(b) * * *

(3) *Accreditation or certification amendments.* No fee will be charged for accreditation or certification amendments.

* * * * *

8. Revise § 745.225 to read as follows:

§ 745.225 Accreditation of training programs: target housing and child occupied facilities.

(a) *Scope.* (1) A training program may seek accreditation to offer courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998.

Training programs may first apply to EPA for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section on or after April 22, 2009.

(3) A training program must not provide, offer, or claim to provide EPA- accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999. A training program must not provide, offer, or claim to provide EPA-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after June 23, 2008.

(b) *Application process.* The following are procedures a training program must follow to receive EPA accreditation to offer lead-based paint activities courses, renovator courses, or dust

sampling technician courses:

(1) A training program seeking accreditation shall submit a written application to EPA containing the following information:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements.

(iii) The name and documentation of the qualifications of the training program manager.

(iv) The name(s) and documentation of qualifications of any principal instructor(s).

(v) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (c) of this section. If a training program uses EPA-recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part, the training program manager shall include a statement certifying that, as well.

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course.

(B) A copy of the course agenda for each course.

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

(vii) All training programs shall include in their application for accreditation the

following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(2) If a training program meets the requirements in paragraph (c) of this section, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the training program under paragraph (i) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(3) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(4) A training program applying for accreditation must submit the appropriate fees in accordance with § 745.238.

(c) *Requirements for the accreditation of training programs.* For a training program to

obtain accreditation from EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

(1) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: Lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to

the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he has been designated the principal instructor.

(4) The following documents shall be recognized by EPA as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (c)(1) and (c)(2) of this section. This documentation must be submitted with the accreditation application and retained by the training program as required by the recordkeeping requirements contained in paragraph (i) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training requirements:

(i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8

hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (d)(1) of this section.

(ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (d)(2) of this section.

(iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (d)(3) of this section.

(iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (d)(4) of this section.

(v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (d)(5) of this section.

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (d)(6) of this section.

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (d)(7) of this section.

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities

courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (c)(7) of this section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course.

(B) The training provider must track each student's course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (i) of this section.

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module.

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students do not receive feedback on their test answers until after they have completed and submitted the test.

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(7) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (d) of this section.

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual.

(ii) The name of the particular course that the individual completed.

(iii) Dates of course completion/test passage.

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion.

(v) The name, address, and telephone number of the training program.

(vi) The language in which the course was taught.

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch.

(9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(ii) Procedures for the training manager's annual review of principal instructor competency.

(10) Courses offered by the training program must teach the work practice standards contained in § 745.85 or § 745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

(11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(12) The training manager shall allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of this section.

(13) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide EPA with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered. The original notification must be received by EPA at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course.

(ii) The training manager must provide EPA updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the

start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to EPA, an updated notification must be received by EPA at least 7 business days before the new start date.

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to EPA, an updated notification must be received by EPA at least 2 business days before the start date provided to EPA.

(iii) The training manager must update EPA of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to EPA.

(iv) The training manager must update EPA regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by EPA at least 2 business days prior to the start date provided to EPA.

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, cancellation).

(B) Training program name, EPA accreditation number, address, and telephone number.

(C) Course discipline, type (initial/refreshers), and the language in which instruction will be given.

(D) Date(s) and time(s) of training.

(E) Training location(s) telephone number, and address.

(F) Principal instructor's name.

(G) Training manager's name and signature.

(vi) Notification must be accomplished using any of the following methods: Written

notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification of lead-based paint activities course schedules can be accomplished by using either the sample form titled "Lead-Based Paint Training Notification" or a similar form containing the information required in paragraph (c)(13)(v) of this section. All written notifications must be delivered to EPA by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at <http://www.epa.gov/lead>. Hearing- or speech-impaired persons may reach the above telephone number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying EPA of such activities in accordance with the requirements of this paragraph.

(14) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any lead-based paint activities course. This notice must be received by EPA no later than 10 business days following course completion.

(ii) The notification must include the following:

(A) Training program name, EPA accreditation number, address, and telephone number.

(B) Course discipline and type (initial/refresher).

(C) Date(s) of training.

(D) The following information for each student who took the course:

(1) Name.

(2) Address.

(3) Date of birth.

(4) Course completion certificate number.

(5) Course test score.

(6) For renovator or dust sampling technician courses, a digital photograph of the student.

(E) Training manager's name and signature.

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification following renovator, dust sampling technician, or lead-based paint activities training courses can be accomplished by using either the sample form titled "Lead-Based Paint Training Course Follow-up" or a similar form containing the information required in paragraph (c)(14)(ii) of this section. All written notifications must be delivered to EPA by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD (5323), or on the Internet at <http://www.epa.gov/lead>.

(d) *Minimum training curriculum requirements.* To become accredited to offer lead-based paint courses in the specific disciplines listed in this paragraph, training programs must ensure that their courses of study include, at a minimum, the following course topics.

(1) *Inspector.* Instruction in the topics described in paragraphs (d)(1)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.

(v) Paint, dust, and soil sampling methodologies.

(vi) Clearance standards and testing, including random sampling.

(vii) Preparation of the final inspection report.

(viii) Recordkeeping.

(2) *Risk assessor.* Instruction in the topics described in paragraphs (d)(2)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor.

(ii) Collection of background information to perform a risk assessment.

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.

(v) Lead hazard screen protocol.

(vi) Sampling for other sources of lead exposure.

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable Federal or State guidance or regulations pertaining to lead-based paint hazards.

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(ix) Preparation of a final risk assessment report.

(3) *Supervisor*. Instruction in the topics described in paragraphs (d)(3)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Liability and insurance issues relating to lead-based paint abatement.

(v) Risk assessment and inspection report interpretation.

(vi) Development and implementation of an occupant protection plan and abatement report.

(vii) Lead-based paint hazard recognition and control.

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction

methods.

(xi) Clearance standards and testing.

(xii) Cleanup and waste disposal.

(xiii) Recordkeeping.

(4) *Project designer.* (i) Role and responsibilities of a project designer.

(ii) Development and implementation of an occupant protection plan for large-scale abatement projects.

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(v) Clearance standards and testing for large scale abatement projects.

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) *Abatement worker.* Instruction in the topics described in paragraphs (d)(5)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an abatement worker.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Lead-based paint hazard recognition and control.

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(6) *Renovator*. Instruction in the topics described in paragraphs (d)(6)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA.

(vi) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vii) Interior and exterior containment and cleanup methods.

(viii) Methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.

(ix) Waste handling and disposal.

(x) Providing on-the-job training to other workers.

(xi) Record preparation.

(7) *Dust sampling technician*. Instruction in the topics described in paragraphs (d)(6)(iv) and (vi) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.

(vi) Report preparation.

(e) *Requirements for the accreditation of refresher training programs.* A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain EPA accreditation to offer refresher training, a training program must meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (d) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all

disciplines except project designer must include a hands-on component.

(3) Except for project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment, and at the completion of the course, a course test.

(4) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (b) of this section. If so, EPA shall use the approval procedure described in paragraph (b) of this section. In addition, the minimum requirements contained in paragraphs (c)(1) through (c)(5) and (c)(7) through (c)(14), and (e)(1), through (e)(3) of this section shall also apply.

(5) A training program seeking accreditation to offer refresher training courses only shall submit a written application to EPA containing the following information:

- (i) The refresher training program's name, address, and telephone number.
- (ii) A list of courses for which it is applying for accreditation.
- (iii) The name and documentation of the qualifications of the training program manager.
- (iv) The name(s) and documentation of the qualifications of the principal instructor(s).
- (v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (c) of this section, except for the requirements in paragraph (c)(6) of this section. If a training program uses EPA-developed model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under § 745.324 to develop its refresher training course materials, the training manager shall include a statement certifying that, as well.
- (vi) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course.

(B) A copy of the course agenda for each course.

(vii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(viii) The requirements in paragraphs (c)(1) through (c)(5), and (c)(7) through (c)(14) of this section apply to refresher training providers.

(ix) If a refresher training program meets the requirements listed in this paragraph, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the refresher training program under paragraph (i) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(f) *Re-accreditation of training programs.* (1) Unless re-accredited, a training program's accreditation, including refresher training accreditation, shall expire 4 years after the date of

issuance. If a training program meets the requirements of this section, the training program shall be reaccredited.

(2) A training program seeking re-accreditation shall submit an application to EPA no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, EPA cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(3) The training program's application for re-accreditation shall contain:

- (i) The training program's name, address, and telephone number.
- (ii) A list of courses for which it is applying for re-accreditation.
- (iii) The name and qualifications of the training program manager.
- (iv) The name(s) and qualifications of the principal instructor(s).
- (v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn.
- (vi) A statement signed by the program manager stating:
 - (A) That the training program complies at all times with all requirements in paragraphs (c) and (e) of this section, as applicable; and
 - (B) The recordkeeping and reporting requirements of paragraph (i) of this section shall be followed.
- (vii) A payment of appropriate fees in accordance with § 745.238.

(4) Upon request, the training program shall allow EPA to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (f)(3) of this section.

(g) *Suspension, revocation, and modification of accredited training programs.* (1) EPA

may, after notice and an opportunity for hearing, suspend, revoke, or modify training program accreditation, including refresher training accreditation, if a training program, training manager, or other person with supervisory authority over the training program has:

- (i) Misrepresented the contents of a training course to EPA and/or the student population.
- (ii) Failed to submit required information or notifications in a timely manner.
- (iii) Failed to maintain required records.
- (iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation.
- (v) Failed to comply with the training standards and requirements in this section.
- (vi) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.
- (vii) Made false or misleading statements to EPA in its application for accreditation or re-accreditation which EPA relied upon in approving the application.

(2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(h) *Procedures for suspension, revocation or modification of training program accreditation.* (1) Prior to taking action to suspend, revoke, or modify the accreditation of a training program, EPA shall notify the affected entity in writing of the following:

- (i) The legal and factual basis for the suspension, revocation, or modification.
- (ii) The anticipated commencement date and duration of the suspension, revocation, or modification.
- (iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.

(iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke or modify accreditation.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the accredited training program, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.

(ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.

(iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.

(3) The Presiding Officer appointed pursuant to paragraph (h)(2) of this section shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training program prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in paragraph (g)(1) of this section. If a suspension,

revocation, or modification notice has not previously been issued pursuant to paragraph (g)(1) of this section, it shall be issued at the same time the emergency suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds for the immediate suspension and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension, revocation or modification hearing.

(iii) Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training program in a hearing under this section shall be available to the public, except as otherwise provided by section 14 of TSCA or by 40 CFR part 2. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or 40 CFR part 2.

(6) The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.

(7) EPA shall maintain a list of parties whose accreditation has been suspended, revoked, modified or reinstated.

(i) *Training program recordkeeping requirements.* (1) Accredited training programs shall maintain, and make available to EPA, upon request, the following records:

(i) All documents specified in paragraph (c)(4) of this section that demonstrate the qualifications listed in paragraphs (c)(1) and (c)(2) of this section of the training manager and principal instructors.

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials.

(iii) The course test blueprint.

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment.

(B) How the skills are graded.

(C) What facilities are used.

(D) The pass/fail rate.

(v) The quality control plan as described in paragraph (c)(9) of this section.

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.

(vii) Any other material not listed in paragraphs (i)(1)(i) through (i)(1)(vi) of this section that was submitted to EPA as part of the program's application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course.

(ix) For course modules delivered in an electronic format, a record of each student's log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(2) The training program must retain records pertaining to renovator, dust sampling technician and lead-based paint activities courses at the address specified on the training program accreditation application (or as modified in accordance with paragraph (i)(3) of this section) for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months.

(ii) Records pertaining to renovator or dust sampling technician courses offered before April 22, 2010 must be retained until July 1, 2015.

(ii) Records pertaining to renovator or dust sampling technician courses offered on or after April 22, 2010 must be retained for a minimum of 5 years.

(3) The training program shall notify EPA in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(j) *Amendment of accreditation.* (1) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(2) To amend an accreditation, a training program must submit a completed "Accreditation Application for Training Providers," signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(3) *Training managers, principal instructors, permanent training locations.* If the

amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until EPA either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that EPA has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to EPA. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if EPA approves the amendment or if EPA does not disapprove the amendment within 30 days.

(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to EPA. The training provider may continue to provide training at the new permanent training location if EPA approves the amendment or if EPA does not disapprove the amendment within 30 days.

9. In § 745.238, add paragraph (c)(5) to read as follows:

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

* * * * *

(c) * * *

(5) *Accreditation amendment fees.* No fee will be charged for accreditation amendments.

* * * * *

10. In § 745.326, revise paragraphs (a)(2)(i), (a)(2)(ii), (d), (e)(1), and (e)(3):

§ 745.326 Renovation: State and Tribal program requirements.

(a) * * *

(2) * * *

(i) Procedures and requirements for the accreditation of renovation and dust sampling technician training programs. (**Note:** a State and Tribal program is not required to include procedures and requirements for the dust sampling technician training discipline if the State or Tribal program requires dust sampling to be performed by a certified lead-based paint inspector or risk assessor.)

(ii) Procedures and requirements for accredited initial and refresher training for renovators and dust sampling technicians and on-the-job training for other individuals who perform renovations.

* * * * *

(d) *Certification of individuals and/or renovation firms.* To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish procedures and requirements that ensure that individuals who perform or direct renovations are properly trained. These procedures and requirements must include:

(i) A requirement that renovations be performed and directed by at least one individual who has been trained by an accredited training program.

(ii) Procedures and requirements for accredited refresher training for these individuals.

(iii) Procedures and requirements for individuals who have received accredited training to provide on-the-job training for those individuals who perform renovations but do not receive

accredited training. (**Note:** a State and Tribal program is not required to include procedures and requirements for on-the-job training for renovation workers if the State or Tribal program requires accredited initial and refresher training for all persons who perform renovations.)

(2) Establish procedures and requirements for the formal certification and re-certification of renovation firms.

(3) Establish procedures for the suspension, revocation, or modification of certifications.

(e) * * *

(1) Renovations must be conducted only by certified renovation firms, using trained individuals.

* * * * *

(3) Certified individuals and/or renovation firms must retain appropriate records.

* * * * *

11. In § 745.327, revise paragraphs (b)(1), (b)(2), (b)(3), and (c)(2) to read as follows:

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

* * * * *

(b) * * *

(1) *Lead-based paint activities or renovation requirements.* State or Tribal lead-based paint compliance and enforcement programs will be considered adequate if the State or Indian Tribe demonstrates, in its application at § 745.324(b)(2), that it has established a lead-based paint program that contains all of the elements specified in § 745.325 or § 745.326, or both, as applicable.

(2) *Authority to enter.* State or Tribal officials must be able to enter, through consent, warrant, or other authority, premises or facilities where lead-based paint violations may occur for

purposes of conducting inspections.

(i) State or Tribal officials must be able to enter premises or facilities where those engaged in training for lead-based paint activities or renovations conduct business.

(ii) For the purposes of enforcing a renovation program, State or Tribal officials must be able to enter a firm's place of business or work site.

(iii) State or Tribal officials must have authority to take samples and review records as part of the lead-based paint inspection process.

(3) *Flexible remedies.* A State or Tribal lead-based paint compliance and enforcement program must provide for a diverse and flexible array of enforcement statutory and regulatory authorities and remedies. At a minimum, these authorities and remedies, which must also be reflected in an enforcement response policy, must include the following:

(i) The authority to issue warning letters, Notices of Noncompliance, Notices of Violation, or the equivalent;

(ii) The authority to assess administrative or civil fines, including a maximum penalty authority for any violation in an amount no less than \$5,000 per violation per day;

(iii) The authority to assess the maximum penalties or fines for each instance of violation and, if the violation is continuous, the authority to assess penalties or fines up to the maximum amount for each day of violation, with all penalties assessed or collected being appropriate for the violation after consideration of factors as the State or Tribe determine to be relevant, including the size or viability of the business, enforcement history, risks to human health or the environment posed by the violation, and other similar factors;

(iv) The authority to commence an administrative proceeding or to sue in courts of competent jurisdiction to recover penalties;

(v) The authority to suspend, revoke, or modify the accreditation of any training provider or the certification of any individual or firm;

(vi) The authority to commence an administrative proceeding or to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, without the necessity of a prior suspension or revocation of a trainer's accreditation or a firm's or individual's certification;

(vii) The authority to apply criminal sanctions, including recovering fines; and

(viii) The authority to enforce its authorized program using a burden of proof standard, including the degree of knowledge or intent of the respondent that is no greater than it is for EPA under TSCA.

* * * * *

(c) * * *

(2) *Compliance assistance.* A State or Tribal lead-based paint compliance and enforcement program must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with State or Tribal requirements governing the conduct of lead-based paint activities or renovations. The type and nature of this assistance can be defined by the State or Indian Tribe to achieve this goal.

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